United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, FIRST SESSION

HOUSE OF REPRESENTATIVES—*Thursday, July 30, 1987*

The House met at 10 a.m.

Rev. Dr. R. Earle Rabb, Trinity United Methodist Church, Palm Beach Gardens, FL, offered the following prayer:

Almighty God, who guided our forefathers to believe that the varied people of this land might become one nation, indivisible, with liberty, and justice for all: Grant that those who govern us and those who legislate for us may be of one mind to establish justice and promote the welfare of all our people. Endow all Members of Congress with a right understanding, pure purposes, and sound speech. Enable them to rise above all self-seeking and party zeal to the nobler concerns of public good and human brotherhood.

Bless our dear country that it may be a blessing to the world. Make us instruments of peace in this turbulent world. As we pray for all nations, help us to think today about what we can do to fulfill the dream of peace on Earth, good will among men, in Your name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. BUECHNER. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BUECHNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will inform absent Members.

The vote was taken by electronic device, and there were—yeas 288, nays 105, not voting 40, as follows:

[Roll No. 291]

YEAS—288

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
AuCoin
Baker
Barnard
Bartlett
Bateman
Beilenson
Bennett
Bereuter
Berman
Bevill
Biaggi
Bilbray
Boggs
Boland
Bonior (MI)
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Bruce
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chapman
Clarke
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coyne
Crockett
Darden
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dicks
Dingell
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Hertel
Hochbrueckner
Holloway
Horton
Houghton
Howard
Hoyer
Huckaby
Hughes
Hutto
Hyde
Jeffords
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kildee
Kolter
Kostmayer
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Livingston
Lloyd
Lowry (WA)
Lujan
Luken, Thomas
MacKay
Madigan
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McEwen
McHugh
McMillen (MD)
Meyers
Mfume
Mica
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Packard
Panetta
Patterson
Pease
Pelosi
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Rinaldo
Ritter
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schulze
Schumer
Sharp
Shaw
Shumway
Shuster
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Solarz
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauke
Taylor
Thomas (GA)
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Wise
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

NAYS—105

Armey
Badham
Ballenger
Bilirakis
Bliley
Boehlert
Bonker
Boulter
Brown (CO)
Buechner
Bunning
Burton
Chandler
Cheney
Clay
Coble
Coughlin
Courter
Craig
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeLay
DioGuardi
Dornan (CA)
Dreier
Edwards (OK)
Emerson
Fields
Gallegly
Gallo
Gekas
Goodling
Gregg
Hansen
Hastert
Henry
Herger
Hiler
Hopkins
Inhofe
Ireland
Jacobs
Kolbe
Konnyu
Kyl
LaFalce
Lagomarsino
Leach (IA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lowery (CA)
Lukens, Donald
Lungren
Mack
Marlenee
Martin (IL)
McCandless
McCollum
McGrath
McMillan (NC)
Michel
Miller (OH)
Molinari
Moorhead
Morella
Nielson
Oxley
Parris
Pashayan
Penny
Quillen
Ridge
Roberts
Rogers
Roth
Roukema
Saiki
Saxton
Schroeder
Schuette
Sensenbrenner
Sikorski
Skeen
Slaughter (VA)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Stangeland
Stump
Sundquist
Swindall
Thomas (CA)
Upton
Walker
Weber
Weldon
Whittaker
Wolf
Young (AK)

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

NOT VOTING—40

Barton	Gephardt	Martin (NY)
Bates	Gingrich	McDade
Bentley	Gray (IL)	Morrison (CT)
Boner (TN)	Hammerschmidt	Nichols
Brown (CA)	Hawkins	Roemer
Bryant	Hubbard	Rowland (CT)
Chappell	Hunter	St Germain
Crane	Johnson (CT)	Tauzin
Daniel	Kasich	Torres
Dickinson	Kemp	Vucanovich
Dixon	Kennelly	Williams
Dymally	Kleczka	Wilson
Ford (TN)	Latta	
Frenzel	Lott	

□ 1015

So the Journal was approved.

The result of the vote was announced as above recorded.

WELCOMING DR. RABB

(Mr. LEWIS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Florida. Mr. Speaker, I ask my fellow Members to please join me in welcoming Dr. R. Earle Rabb, our guest chaplain today.

My good friend Dr. Rabb is senior pastor of Trinity United Methodist Church in Palm Beach Gardens, FL.

Dr. Rabb is a 1961 graduate of the University of Florida and a 1964 graduate of the Theological School of Drew University.

In 1980, 4 years after his assignment to Trinity United Methodist Church, Dr. Rabb received his doctor of ministry degree from Drew University.

Under his leadership the membership at Trinity has grown from 1,000 members to more than 2,100.

Trinity has grown in many other areas under Dr. Rabb's guidance. The church is consistently in the top 25 of all churches in the Florida Conference. Four missionaries receive partial support and short-term mission volunteer teams continue to go out from Trinity on a variety of projects both in and out of the United States.

Dr. Rabb is a man of vision and strong leadership. He cares deeply about his family, his congregation, and his community. I would be remiss if I didn't mention his lovely wife Phyllis and their children Steve, Cheryl, and Lisa.

It is indeed a pleasure to have Dr. Rabb here to help begin our day.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 348. An act to amend title 39, United States Code, to extend to certain officers and employees of the U.S. Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are afforded under title 5, United States Code, to Federal employees in the competitive service; and

H.R. 921. An act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units.

THE REAL CAUSE OF UNREST IN CENTRAL AMERICA IS POVERTY, DISEASE, AND ILLITERACY, NOT A MARXIST MINIPOWER

(Mr. KENNEDY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KENNEDY. Mr. Speaker, I rise in opposition to U.S. aid to the Contras, which has already cost over $1 billion. We are now improving our relationships with the Soviet Union. We have an arms control agreement in sight. We see wheat deals that allow the American consumer to subsidize the Soviet consumer. We see the Bolshoi Ballet here in Washington.

With regard to the People's Republic of China, we are now selling them sophisticated military equipment.

I just have one question: If we can handle the Communist superpowers, then why are we so afraid of a Marxist minipower in Central America?

The real cause of unrest in Central America is poverty, disease, and illiteracy. The United States has the technology, it has the compassion and it has the capital necessary to fight these.

If we are really interested in fighting the forces that are needed to develop the developing world, then we can invest in the people of Central America, not the fighting machines of Central America.

INTRODUCTION OF LEGISLATION TO REPEAL THE BUDGET ACT AND GRAMM-RUDMAN-HOLLINGS ACT

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, there are 18 legislative days left before the start of the fiscal year. Only eight appropriations bills have passed the House, and not a single one has been marked up in the Senate.

In September this House will consider the biggest continuing resolution in history. That CR grows with every day that passes without action on appropriation bills.

We will start the new fiscal year with a deficit estimated at $181 billion. That deficit grows with every day that passes without legislative action to control spending or raise revenues.

We are paralyzed by budget resolutions, reconciliation instructions, Gramm-Rudman fixes, and all of the other procedural gimmicks that we have constructed to avoid real legislative choices.

When we are not busy legislating, we hold meetings on budget reform—which means more procedural gimmicks—and we forget that the Budget Act and Gramm-Rudman were reforms when we passed them.

These reforms are directly responsible for large deficits and big CR's.

Next week I will propose a real reform by introducing a bill to repeal the Budget Act and the Gramm-Rudman-Hollings Act.

If you want Congress and the President to deal directly with the deficit—without Mickey Mouse as a referee—then I invite you to join me as a consponsor.

□ 1030

A SALUTE TO THE SALT LAKE CITY TRAPPERS

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, last Saturday night, history was made in Salt Lake City. A sellout crowd witnessed a historic moment in professional sports. The Salt Lake Trappers, barely 3 years old as a baseball team, and not affiliated with any major league team, won its 28th game and have since increased this record to 29 straight games. Until Saturday evening, the Baltimore Orioles have held the record of 27 wins since 1921. So the Salt Lake Trappers have broken a 66-year-old record in professional baseball.

We salute Ron Sabala, Bill Murray, and the other owners as well as manager-coach Jim Gilligan and the all-star team of players, Utah athletes who have genuinely distinguished themselves and have made us proud.

PROPOSED LEGISLATION WOULD IMPROVE SURPLUS COMMODITY DISTRIBUTION

(Mr. RIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RIDGE. Mr. Speaker, let me say to my colleagues today that I will be introducing legislation to improve surplus commodity distribution to those most in need. We must renew our efforts to eliminate the disgrace of hunger in the world's wealthiest nation. Last year, while countless Americans went without adequate nutrition, 600 million pounds of cheese were available in federally supported warehouses, all of which could and should have been distributed to the poor and to emergency feeding organizations around the country.

My bill would allow food banks a greater role in distributing these commodities to those in need. Food banks already provide centralized accountability and management, and through their network of emergency feeding organizations, can distribute commodities to needy Americans in a prompt and efficient manner.

Section 1 of the bill reestablishes the food bank special nutrition project, which allows food banks to receive and distribute surplus commodities. This program proved to be very effective from 1982 through 1984. Although authority for this project has never ceased, the Department of Agriculture no longer operates it; my legislation reestablishes the project.

Section 2 of the bill will also allow at least one food bank demonstration project in each Federal region. Under this project, food banks could provide and redistribute section 32 commodities to needy individuals and families. Thus pasta, meat, poultry, flour, rice, and honey would reach those in need.

Food banks have a much higher level of accountability and superior management skills than are now practiced in the TEFAP Program. We should seize this opportunity to take advantage of the proven network already in place to improve the distribution of surplus commodities and feed the hungry of this Nation.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT ON BILL MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES FOR FISCAL YEAR 1988

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight. Thursday, July 30, 1987, to file a privileged report on a bill making appropriations for the Department of Labor, the Department of Health and Human Services, and the Department of Education, and related agencies, for the fiscal year ending September 30, 1988, and for other purposes.

Mr. CONTE reserved all points of order on the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE GOAL OF IMPROVED READINESS IN THE ARMED FORCES

(Mr. McCURDY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCURDY. Mr. Speaker, we are facing a defense problem of increasing magnitude—and it is one that we cannot afford to overlook. Since 1981, the administration has put tremendous emphasis on RDT&E and procurement of new major weapons systems. I have supported most of these systems, but they will be worth our huge investment only if we provide the backup necessary to make them work.

Along with our 600-ship Navy, 37 tactical fighter wings, and 675 Apache attack helicopters, come challenges associated with new and complex weapon systems. To meet them, we are going to have to make some changes in the area of logistics.

The priority given to modernization over readiness has been apparent throughout the Reagan administration. Funding for investment has grown in real terms by 44 percent, while funding for support programs increased by only 13 percent. The tremendous growth in investment spending made new weapons systems possible. But now we need ammunition, spare parts, personnel, and operations and maintenance funding to make them work.

Many of our Air Logistics Command centers, such as Tinker Air Force Base in Oklahoma, simply don't have adequate funding to do the job that they are directed to do. The manpower, parts and spares they need to ready the fighters and bombers we depend on are not always available.

Mr. Speaker, high procurement spending doesn't necessarily mean high readiness. If we want a complete and capable Armed Forces structure, now is the time to concentrate on readiness and support.

INTRODUCTION OF LEGISLATION TO INSURE KUWAIT'S COOPERATION IN MINESWEEPING EXERCISES

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, I do not know how many of the Members are following the dynamics in the Persian Gulf, but America is sending eight minesweeping helicopters into the gulf to continue to try and protect our fighting men and our escorts.

Now, be advised that with all of this we are protecting Kuwaiti oil shipments. They have said they are not responsible and they will not allow our helicopters to land on their soil, and we have to service those helicopters from the Indian Ocean.

Mr. Speaker, this is an outrage. We spend $40 million to protect oil for nations all over the world. This is mainly to Kuwait's interest, and they will not even cooperate.

Yesterday I introduced H.R. 3039. It has 40 cosponsors, and it says, right to the point, that if Kuwait does not cooperate to help us protect the safety of our troops and their oil, we will take our flags off their tankers.

Mr. Speaker, I think that is the type of thing our body should be doing because we have become the laughing stock of the international community.

CONTRAS STILL BEHAVING LIKE LOSERS

(Mr. WHEAT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WHEAT. Mr. Speaker, in the near future the Congress does face difficult decisions in Nicaragua. The Sandinistas, certainly nobody's angels, are not every Nicaraguan's idea of good government. But in the battle for the hearts and minds of the Nicaraguan people, the Contras are still losers. Why? Consider their recruiting tactics.

If you're a Contra, drop in on an unsuspecting campesino and eat what little food he has. Establish your democratic credentials by getting violent with his family. In exchange, allow the eager campesino the chance to be a human land mine—let him walk the point of your brave Contra platoon. If he fails to detonate, send him home, but take his son with you. After all, you're not a Marine recruiter looking for a "few good men." You're a Contra recruiter—you'll settle for a "few good boys."

Sound like fiction? Ask the 13-year-old boy I met in a Nicaraguan Contra camp. He was no fiction. He was a Contra.

LT. COL. JAMES BASILE

(Mr. SLATTERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLATTERY. Mr. Speaker, our country has suffered the loss of a distinguished and dedicated military officer.

U.S. Air Force Lieutenant Colonel James "Jim" Basile of Topeka, KS, was killed July 15 in a helicopter crash near San Salvador while serving as deputy group commander of the United States Southern Command in El Salvador.

The tragic accident, which claimed the lives of five other American servicemen, occurred during a flight in bad weather to pick up a wounded American military adviser.

A dedicated man, he endured separation from his family and friends, and the dangers of being in Central America to serve his country.

And he served his country with courage and commitment.

His long military career was marked with distinction.

Because of his outstanding contributions and accomplishments in the U.S. military, his family has been presented with a Distinguished Service Medal in his honor. The award is a superior service award and is the highest award given by the U.S. Defense Department in peacetime.

Lieutenant Colonel Basile's death is not only a loss to those who knew him, but to our country as well.

His dedication to protecting our basic freedoms is a proud, strong symbol of what is best in America. His loss of life while doing so is a poignant reminder of why these freedoms must never be taken for granted.

I extend my deepest sympathies to Lieutenant Colonel Basile's wife, Janie, and his three children, Anne, Steve, and David and his entire family.

CONGRESSIONAL CALL TO CONSCIENCE FOR SOVIET JEWS

(Mr. ANDREWS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, today, I join with my colleagues on both sides of the aisle in support of the call to conscience for Soviet Jews. As a member of the Congressional Caucus on Soviet Jewry, I am proud to hear so many Members of Congress keeping the hope alive for the hundreds of thousands of refuseniks in the Soviet Union.

This year has seen much success. So far, over 3,000 Soviet Jews have emigrated. The new era of glasnost in the Soviet Union offers the prospect of new opportunities for Soviet Jews. But despite these new opportunities, old problems remain.

No one can teach us the course for the future better than the recent emigrants. They have had to overcome accusations of holding state secrets when they have never had access to state secrets. They have been forced to leave children, parents, and spouses behind.

The Soviet Union has much progress to make before our vigil ends. I remain personally committed to Vladimir and Karmella Raiz. Their family has been continually denied exit visas since 1972.

Vladimir, a molecular biologist, and Karmella, a concert violinist, have been subject to many injustices. They have been the targets of slander in the Soviet press, have had personal property confiscated, and have lived under virtual house arrest.

I hope that the Soviet Union will recognize the plight of the Raizes and the other refuseniks that remain.

□ 1045

HOSPITAL-BASED RISK MANAGEMENT—A COMPONENT OF THE MALPRACTICE SOLUTION

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, as the headlines from Dade County remind us, the medical malpractice crisis is far from over.

In June, GAO finished a 2-year study I commissioned on the malpractice problem, and they came out with a series of recommendations. The GAO, Mr. Speaker, advocates a broad-based approach to solving the medical malpractice problem—physicians, lawyers, insurers, and consumers must leave the field of combat and work together.

One component of that solution is hospital-based risk management programs. Since four out of five malpractice claims arise out of a hospital incident, the hospital is the logical place to establish such systems. Risk management serves as an early warning system within the hospital while providing a data base to point out possible problem areas. Computerized risk management systems that provide for incident screening, occurrence reporting, and specialized claim studies; and that educate providers on acceptable quality of care, and minimize the possiblity of malpractice are a critical component of the solution to the malpractice crisis. Such systems should be mandatory.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. McCURDY). The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bill and joint resolution on Wednesday, July 29, 1987:

H.R. 3022. An act to provide for a temporary extension of the public debt limit; and

S.J. Res. 151. Joint resolution to designate August 1, 1987, as "Helsinki Human Rights Day."

PRIVILEGES OF THE HOUSE—RETURNING TO THE SENATE THE BILL S. 829

Mr. ROSTENKOWSKI. Mr. Speaker, I rise to a question of the privileges of the House, and I send to the desk a privileged resolution (H. Res. 235) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 235

Resolved, That the bill of the Senate (S. 829) to authorize appropriations for the United States International Trade Commission, the United States Customs Service, and the Office of the United States Trade Representative for fiscal year 1988, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill he respectfully returned to the Senate with a message communicating this resolution.

The SPEAKER pro tempore. The resolution presents a question of privilege, and the gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 1 hour.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 235 is a simple resolution returning the Senate bill, S. 829, to the Senate because it contravenes the constitutional requirement that revenue measures originate in the House of Representatives. S. 829, which passed the Senate on March 30, 1987, is a bill to authorize appropriations for the U.S. Customs Service, the International Trade Commission, and the Office of the U.S. Trade Representative. Standing alone these authorizations do not constitute revenue measures. However, the Senate added as a floor amendment a provision relating to imports from the Soviet Union which amends current provisions of the Tariff Act of 1930. This change in our tariff laws does constitute a revenue measure in the constitutional sense.

While the House, by adopting this resolution, will preserve its prerogative to originate such matters, I want to make it clear to all Members that our action does not constitute a rejection of the Senate bill on its merits. In fact, the Committee on Ways and Means has approved the agency authorizations in question as part of the budget reconciliation process, while the Senate has added them as amendments to the House-passed trade bill. Our action today merely indicates that the appropriate procedure for dealing with tariff matters that affect revenues is for the House to act first on a revenue vehicle and the Senate to add its amendments and seek a conference. In fact, the omnibus trade bill, H.R. 3, does contain numerous changes in tariffs, and it would be appropriate to take up such matters in the course of our conference on that bill.

Mr. Speaker, I urge adoption of this resolution.

Mr. Speaker, I yield to the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the motion offered by the gentleman from Illinois to return S. 829 to the other body. Section 5 of this measure prohibits the importation of gold ore, agricultural machinery, tractor generators, tea, crude petroleum, motor fuel, and kerosene from the U.S.S.R. on the

grounds that these items are produced by indentured labor.

Duties on these products, which are assessed under column two of the tariff schedules, are relatively high. Thus, the measure would result in a significant loss of revenue to the U.S. Treasury. The Parliamentarian has ruled that, under the Constitution, such a measure should originate in this body.

Mr. Speaker, all of the issues raised by S. 829 have been included in H.R. 3, as passed by the Senate, and thus will be part of the upcoming conference on omnibus trade legislation. Therefore, I urge my colleagues to support the motion offered to return S. 829 to the other body in order to preserve the prerogatives of this House on matters relating to revenue.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MEDICARE AND MEDICAID PATIENT AND PROGRAM PROTECTION ACT OF 1987

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1444) to amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that act from unfit health care practitioners, and otherwise to improve the antifraud provisions to those programs, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicare and Medicaid Patient and Program Protection Act of 1987".

(b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of, a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; references in Act; table of contents.
Sec. 2. Exclusion from medicare and State health care programs.
Sec. 3. Civil monetary penalties.
Sec. 4. Criminal penalties for acts involving medicare and State health care programs.
Sec. 5. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.
Sec. 6. Obligation of health care practitioners and providers.
Sec. 7. Exclusion under the medicaid program.
Sec. 8. Miscellaneous and conforming amendments.
Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.
Sec. 10. Limitation of liability of medicare beneficiaries with respect to services furnished by excluded individuals and entities.
Sec. 11. Definition of person with ownership or control interest.
Sec. 12. Conditional approval of renal dialysis facilities.
Sec. 13. Amendment relating to fraud involving medicare supplemental insurance.
Sec. 14. Standards for anti-kickback provisions.
Sec. 15. Effective dates.

SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128 (42 U.S.C. 1320a-7) is amended to read as follows:

"EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

"SEC. 1128. (a) MANDATORY EXCLUSION.—The Secretary shall exclude the following individuals and entities from participation in any program under title XVIII and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h)):

"(1) CONVICTION OF PROGRAM-RELATED CRIMES.—Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.

"(2) CONVICTION RELATING TO PATIENT ABUSE.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

"(b) PERMISSIVE EXCLUSION.—The Secretary may exclude the following individuals and entities from participation in any program under title XVIII and may direct that the following individuals and entities be excluded from participation in any State health care program:

"(1) CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

"(2) CONVICTION RELATING TO OBSTRUCTION OF AN INVESTIGATION.—Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a).

"(3) CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

"(4) LICENSE REVOCATION OR SUSPENSION.—Any individual or entity—

"(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

"(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

"(5) EXCLUSION OR SUSPENSION UNDER FEDERAL OR STATE HEALTH CARE PROGRAM.—Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

"(A) any Federal program, including programs of the Department of Defense or the Veterans' Administration, involving the provision of health care, or

"(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

"(6) CLAIMS FOR EXCESSIVE CHARGES OR UNNECESSARY SERVICES AND FAILURE OF CERTAIN ORGANIZATIONS TO FURNISH MEDICALLY NECESSARY SERVICES.—Any individual or entity that the Secretary determines—

"(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under title XVIII or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

"(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under title XVIII or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

"(C) is—

"(i) a health maintenance organization (as defined in section 1903(m)) providing items and services under a State plan approved under title XIX, or

"(ii) an entity furnishing services under a waiver approved under section 1915(b)(1),

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under title XIX) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

"(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1876 and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

"(7) FRAUD, KICKBACKS, AND OTHER PROHIBITED ACTIVITIES.—Any individual or entity that the Secretary determines has committed an act which is described in section 1128A or section 1128B.

"(8) ENTITIES CONTROLLED BY A SANCTIONED INDIVIDUAL.—Any entity with respect to which the Secretary determines that a person—

"(A)(i) with an ownership or control interest (as defined in section 1124(a)(3)) in that entity, or

"(ii) who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of that entity—

is a person—

"(B)(i) who has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

"(ii) against whom a civil monetary penalty has been assessed under section 1128A; or

"(iii) who has been excluded from participation under a program under title XVIII or under a State health care program.

"(9) FAILURE TO DISCLOSE REQUIRED INFORMATION.—Any entity that did not fully and accurately make any disclosure required by section 1124 or section 1126.

"(10) FAILURE TO SUPPLY REQUESTED INFORMATION ON SUBCONTRACTORS AND SUPPLIERS.—Any disclosing entity (as defined in section 1124(a)(2)) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

"(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

"(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

"(11) FAILURE TO SUPPLY PAYMENT INFORMATION.—Any individual or entity furnishing items or services for which payment may be made under title XVIII or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

"(12) FAILURE TO GRANT IMMEDIATE ACCESS.—Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

"(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1864(a) (relating to compliance with conditions of participation or payment).

"(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1902(a) and under section 1903(g).

"(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

"(D) To a State medicaid fraud control unit (as defined in section 1903(q)), for the purpose of conducting activities described in that section.

"(13) FAILURE TO TAKE CORRECTIVE ACTION.—Any hospital that fails to comply substantially with a corrective action required under section 1886(f)(2)(B).

"(14) DEFAULT ON HEALTH EDUCATION LOAN OR SCHOLARSHIP OBLIGATIONS.—Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under title XVIII or XIX.

"(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF EXCLUSION.—(1) An exclusion under this section or under section 1128A shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

"(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

"(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under title XVIII or under a State health care program for—

"(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

"(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

"(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1128A, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12), the period) of the exclusion.

"(B) In the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

"(C) In the case of an exclusion of an individual under subsection (b)(12), the period of the exclusion shall be equal to the sum of—

"(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

"(ii) an additional period, not to exceed 90 days, set by the Secretary.

"(d) NOTICE TO STATE AGENCIES AND EXCLUSION UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to paragraph (3), the Secretary shall exercise the authority under subsection (b) in a manner that results in an individual's or entity's exclusion from all the programs under title XVIII and all the State health care programs in which the individual or entity may otherwise participate.

"(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and to which section 304(a)(5) of the Controlled Substances Act may apply, the Attorney General)—

"(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1128A, and

"(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

"(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under a program under title XVIII.

"(B) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

"(e) NOTICE TO STATE LICENSING AGENCIES.—The Secretary shall—

"(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1128A, of the fact and circumstances of the exclusion,

"(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

"(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

"(f) NOTICE, HEARING, AND JUDICIAL REVIEW.—(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

"(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) shall be entitled to a hearing by an administrative law judge (as provided under section 205(b)) on the determination under subsection (b)(7) before any exclusion based upon the determination takes effect.

"(3) The provisions of section 205(h) shall apply with respect to this section and sec-

tions 1128A and 1156 to the same extent as it is applicable with respect to title II.

"(g) APPLICATION FOR TERMINATION OF EXCLUSION.—(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1128A may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1128A.

"(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

"(A) there is no basis under subsection (a) or (b) or section 1128A(a) for a continuation of the exclusion, and

"(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

"(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and to which section 304(a)(5) of the Controlled Substances Act may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

"(h) DEFINITION OF STATE HEALTH CARE PROGRAM.—For purposes of this section and sections 1128A and 1128B, the term 'State health care program' means—

"(1) a State plan approved under title XIX,

"(2) any program receiving funds under title V or from an allotment to a State under such title, or

"(3) any program receiving funds under title XX or from an allotment to a State under such title.

"(i) CONVICTED DEFINED.—For purposes of subsections (a) and (b), a physician or other individual is considered to have been 'convicted' of a criminal offense—

"(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

"(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

"(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

"(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.".

SEC. 3. CIVIL MONETARY PENALTIES.

(a) GROUNDS FOR IMPOSITION.—(1) Section 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is amended by striking "the Secretary determines" and all that follows through "; or" and inserting "the Secretary determines—

"(A) is for a medical or other item or service that the person knows or has reason to know was not provided as claimed,

"(B) is for a medical or other item or service and the person knows or has reason to know the claim is false or fraudulent,

"(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or has reason to know that the individual who furnished (or supervised the furnishing of) the service—

"(i) was not licensed as a physician,

"(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

"(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified, or

"(D) is for a medical or other item or service furnished during a period in which the person was excluded under the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1128, 1156, 1160(b) (as in effect on September 2, 1982), 1862(d) (as in effect on the date of the enactment of the Medicare and Medicaid Patient and Program Protection Act of 1987), or 1866(b); or".

(2) Section 1128A(a)(2) is amended—

(A) in subparagraph (B) by inserting "(or other requirement of a State plan under title XIX)" after "State agency", and

(B) by inserting at the end "or (D) an agreement pursuant to section 1866(a)(1)(G), or".

(3) Subsection (a) of section 1128A is further amended—

(A) by inserting after paragraph (2) and before the end matter of such subsection the following new paragraph:

"(3) gives to any person, with respect to coverage under title XVIII of inpatient hospital services subject to the provisions of section 1886, information that he knows or has reason to know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;", and

(B) in the matter following paragraph (3)—

(i) by inserting "(or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given)" before the period at the end of the first sentence, and

(ii) by adding at the end thereof the following new sentence: "In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under title XVIII and to direct the appropriate State agency to exclude the person from participation in any State health care program.".

(b) STATUTE OF LIMITATION ON ACTIONS.—Subsection (c)(1) of section 1128A (as redesignated by section 9313(c)(1)(D) of the Omnibus Budget Reconciliation Act of 1986) is amended by adding at the end the following new sentences: "The Secretary may not initiate an action under this section with respect to any claim later than six years after the date the claim was presented. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.".

(c) CONFORMING AMENDMENT.—Subsections (c), (d), (g), and (h) of section 1128A are each amended by striking "penalty or assessment" and inserting "penalty, assessment, or exclusion" each place it appears.

(d) PRO-RATED PAYMENT OF RECOVERIES TO STATE AGENCIES.—Subsection (f)(1)(A) of section 1128A is amended by striking "equal to the State's share of the amount paid by the State agency" and inserting "bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid".

(e) NOTICE TO STATE AGENCIES.—Subsection (h) of section 1128A is further amended by inserting "the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),'' after "professional organization,".

(f) APPLICATION OF SUBPOENA POWER AND INJUNCTIVE POWERS.—Section 1128A is further amended by adding at the end the following new subsections:

"(j) The provisions of subsections (d) and (e) of section 205 shall apply with respect to this section to the same extent as they are applicable with respect to title II. The Secretary may delegate the authority granted by section 205(d) (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

"(k) Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.".

SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) TECHNICAL AMENDMENTS.—Section 1909 (42 U.S.C. 1396h) is amended—

(1) by amending the heading to read as follows:

"CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE OR STATE HEALTH CARE PROGRAMS";

(2) in subsection (a)(1), by striking "a State plan approved under this title" and inserting "a program under title XVIII or a State health care program (as defined in section 1128(h))";

(3) in the matter in subsection (a) following paragraph (4), by striking "this title" the first place it appears and inserting "the program";

(4) in the last sentence of subsection (a), by striking "this title" the first place it appears and inserting "title XIX", and by striking "this title" the second place it appears and inserting "that title";

(5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (3)(A) of subsection (b), by striking "this title" and inserting "title XVIII or a State health care program" each place it appears;

(6) in subsection (b)(3)—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under title XVIII or a State health care program if—

"(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

"(ii) in the case of an entity that is a provider of services (as defined in section 1861(u)), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity.";

(7) in subsection (c), by striking "or home health agency (as those terms are employed in this title)" and inserting 'home health agency, or other entity for which certification is required under title XVIII or a State health care program"; and

(8) in subsection (d), by striking "this title" and inserting "title XIX" each place it appears.

(b) CRIMINAL PENALTIES FOR PHYSICIAN MISREPRESENTATIONS.—Subsection (a) of such section is further amended—

(1) by striking "or" at the end of paragraph (3),

(2) by inserting "or" at the end of paragraph (4), and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a program under title XVIII or a State health care program and knows that the individual who furnished the service was not licensed as a physician,".

(c) REDESIGNATION OF SECTION 1877(d) AS SECTION 1128B(e).—Subsection (d) of section 1877 (42 U.S.C. 1395nn) is redesignated as subsection (e) and is transferred and inserted in section 1909 at the end thereof.

(d) REDESIGNATION OF SECTION 1909 AS SECTION 1128B.—Section 1909, as amended by subsections (a), (b), and (c) of this section, is redesignated as section 1128B and is transferred to title XI and inserted immediately after section 1128A.

(e) REPEAL.—Section 1877 (other than subsection (d) thereof which was transferred under subsection (c) of this section) is repealed.

SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.

(a) MEDICAID PLAN REQUIREMENT.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (46),

(2) by striking the period at the end of the paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46),

(3) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting "; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47), and

(4) by inserting after paragraph (48) the following new paragraph:

"(49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1921.".

(b) INFORMATION REQUIRED.—Title XIX is amended by redesignating section 1921 as section 1922 and inserting after section 1920 the following new section:

"INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS

"SEC. 1921. (a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 1902(a)(49) is that the State must provide for the following:

"(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners or entities:

"(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

"(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

"(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

"(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

"(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

"(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

"(2) to licensing authorities described in subsection (a)(1),

"(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

"(4) to utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) with respect to eligible organizations reviewed under the contracts,

"(5) to State medicaid fraud control units (as defined in section 1903(q)),

"(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 of, and be subject to the provisions of, that Act),

"(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

"(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

"(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

"(d) APPROPRIATE COORDINATION.—The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986.".

SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND PROVIDERS.

Section 1156 (42 U.S.C. 1320c-5) is amended—

(1) by striking "title XVIII" and "such title" in subsection (a) and inserting "this Act" in each instance, and

(2) by striking "title XVIII" in subsection (b) and inserting "this Act" each place it appears.

SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.

Section 1902 (42 U.S.C. 1396b) is amended by redesignating the subsection (l) added by section 3(b) of the Employment Opportunities for Disabled Americans Act as subsection (o) and by inserting after such subsection the following new subsection:

"(p)(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this title for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII under section 1128, 1128A, or 1866(b)(2).

"(2) In order for a State to receive payments for medical assistance under section 1903(a), with respect to payments the State makes to a health maintenance organization (as defined in section 1903(m)) or to an entity furnishing services under a waiver approved under section 1915(b)(1), the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

"(A) could be excluded under section 1128(b)(8) (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions), or

"(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1128(b)(8)(B).

"(3) As used in this subsection, the term 'exclude' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.".

SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.

(a) MATERNAL AND CHILD HEALTH PROGRAM.—Section 504(b) (42 U.S.C. 704(b)) is amended—

(1) by striking "or" at the end of paragraph (4),

(2) by striking the period at the end of paragraph (5) and inserting "; or", and

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

"(6) payment for any item or service (other than an emergency item or service) furnished—

"(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1128 or section 1128A from participation in the program under this title, or

"(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded pursuant to section 1128 or section 1128A from participation in the program under this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).".

(b) DISCLOSURE REQUIREMENTS.—(1) Subsection (a) of section 1126 (42 U.S.C. 1320a-5) is amended—

(A) in the first sentence, by striking "or other institution" and all that follows through the period at the end and inserting "or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1128(b)(8).", and

(B) in the second sentence, by striking "institution, organization, or agency" and inserting "entity".

(2) Subsection (b) of such section is amended by striking "institution, organization, or agency" and inserting "entity" each place it appears.

(c) MEDICARE PAYMENTS.—(1) Section 1862 (42 U.S.C. 1395y) is amended—

(A) by repealing subsection (d), and

(B) by amending subsection (e) to read as follows:

"(e) No payment may be made under this title with respect to any item or service (other than an emergency item or service) furnished—

"(1) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1128 or section 1128A from participation in the program under this title; or

"(2) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1128 or section 1128A from participation in the program under this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).".

(2) Section 1842(j) (42 U.S.C. 1395u(j)) is amended—

(A) in paragraph (2)—

(i) by amending subparagraph (A) to read as follows:

"(A) excluding a physician from participation in the programs under this title for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1128, or", and

(ii) by striking "barred from participation in the program" in the second sentence and inserting "excluded from participation in the programs"; and

(B) by striking "bar" in paragraph (3)(A) and inserting "exclude".

(3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is amended by striking "paragraphs (2) and (3) of subsection (d)" and inserting "subsections (c), (f), and (g) of section 1128".

(4) Paragraph (3) of section 1886(f) (42 U.S.C. 1395ww(f)) is amended to read as follows:

"(3) The provisions of subsections (c) through (g) of section 1128 shall apply to determinations made under paragraph (2) in the same manner as they apply to exclusions effected under section 1128(b)(13).".

(d) TERMINATION OF PROVIDER AGREEMENTS UNDER MEDICARE.—Section 1866 (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)—

(A) by striking paragraph (3), and

(B) by redesignating paragraph (4) as paragraph (3);

(2) by amending subsection (b) to read as follows:

"(b)(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

"(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

"(A) has determined that the provider fails to comply substantially with the provisions of the agreement, with the provisions of this title and regulations thereunder, or with a corrective action required under section 1886(f)(2)(B),

"(B) has determined that the provider fails substantially to meet the applicable provisions of section 1861, or

"(C) has excluded the provider from participation in a program under this title pursuant to section 1128 or section 1128A.

"(3) A termination of an agreement or a refusal to renew an agreement under this subsection shall become effective on the same date and in the same manner as an exclusion from participation under the programs under this title becomes effective under section 1128(c).";

(3) in paragraphs (1) and (3) of subsection (c), by striking "an agreement filed under this title by a provider of services has been terminated by the Secretary" and inserting "the Secretary has terminated or has refused to renew an agreement under this title with a provider of services";

(4) by inserting "or nonrenewal" in subsection (c) after "termination" each place it appears; and

(5) by adding at the end the following new subsection:

"(h)(1) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

"(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1128 and this section with respect to a determination or determinations based on the same underlying facts and issues.".

(e) CONFORMING AMENDMENT.—Section 1869 (42 U.S.C. 1395ff) is amended by striking subsection (c).

(f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42 U.S.C. 1396b(a)) is amended—

(1) in paragraph (23), by inserting "subsection (g) and in" after "except as provided in",

(2) in paragraph (38), by striking "respectively, (A)" and all that follows up to the semicolon at the end and inserting "the information described in section 1128(b)(9)", and

(3) in paragraph (39)—

(A) by striking "bar" and inserting "exclude",

(B) by striking "person" and inserting "individual or entity" each place it appears, and

(C) by inserting "or section 1128A" after "section 1128".

(g) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNDER MEDICAID.—Paragraph (2) of section 1903(i) (42 U.S.C. 1396b(i)) is amended to read as follows:

"(2) with respect to any amount expended for an item or service (other than an emergency item or service) furnished—

"(A) under the plan by any individual or entity during any period when the individual or entity is excluded from participation in the State plan under this title pursuant to section 1128 or section 1128A, or

"(B) at the medical direction or on the prescription of a physician, during the period when such physician is excluded pursuant to section 1128 or section 1128A from participation in the program under this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).".

(h) MEDICAID CONFORMING AMENDMENTS.—(1) Subsection (n) of section 1903 (42 U.S.C. 1396b) is repealed.

(2) Paragraph (2) of section 1915(a) (42 U.S.C. 1396n(a)) is amended to read as follows:

"(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

"(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

"(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.".

(i) TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is amended—

(1) by striking "or" at the end of paragraph (7),

(2) by striking the period at the end of paragraph (8) and inserting "; or", and

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

"(9) for payment for any item or service (other than an emergency item or service) furnished—

"(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1128 or section 1128A from participation in the program under this title, or

"(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded pursuant to section 1128 or section 1128A from participation in the program under this

title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).".

(j) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM THE MEDICARE PROGRAM.—Section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)) is amended—

(1) by striking "or" at the end of paragraph (3),

(2) by striking the period at the end of paragraph (4) and inserting "; or", and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) has been excluded (or directed to be excluded) from participation in a program pursuant to section 1128(a) of the Social Security Act.".

SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVISIONS OF DEFICIT REDUCTION ACT OF 1984.

Section 2373(c) of the Deficit Reduction Act of 1984 (Public Law 98-369; 98 Stat. 1112) is amended to read as follows:

"(c)(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act (including any part of the plan operating pursuant to section 1902(f) of such Act), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

"(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

"(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

"(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

"(5) In this subsection, a State plan is considered to include—

"(A) any amendment or other change in the plan which is submitted by a State, or

"(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

"(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

"(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

"(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).".

SEC. 10. LIMITATION OF LIABILITY OF MEDICARE BENEFICIARIES WITH RESPECT TO SERVICES FURNISHED BY EXCLUDED INDIVIDUALS AND ENTITIES.

Title XVIII is amended by adding at the end the following new section:

"LIMITATION OF LIABILITY OF BENEFICIARIES WITH RESPECT TO SERVICES FURNISHED BY EXCLUDED INDIVIDUALS AND ENTITIES

"SEC. 1890. Where an individual eligible for benefits under this title submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this title, pursuant to section 1128, 1128A, 1156, 1160 (as in effect on September 2, 1982), 1862(d) (as in effect on the date of the enactment of the Medicare and Medicaid Patient and Program Protection Act of 1987), or 1866, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this title, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.".

SEC. 11. DEFINITION OF PERSON WITH OWNERSHIP OR CONTROL INTEREST.

Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-3(a)(3)(A)(ii)) is amended by striking "$25,000 or".

SEC. 12. CONDITIONAL APPROVAL OF RENAL DIALYSIS FACILITIES.

Section 1881 (42 U.S.C. 1395rr) is amended by adding at the end the following new subsection:

"(h)(1) In any case where the Secretary—

"(A) finds that a renal dialysis facility is not in substantial compliance with requirements for such facilities prescribed under subsection (b)(1)(A),

"(B) finds that the facility's deficiencies do not immediately jeopardize the health and safety of patients, and

"(C) has given the facility a reasonable opportunity to correct its deficiencies,

the Secretary may, in lieu of terminating approval of the facility, determine that payment under this title shall be made to the facility only for services furnished to individuals who were patients of the facility before the effective date of the notice.

"(2) The Secretary's decision to restrict payments under this subsection shall be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and shall remain in effect until (A) the Secretary finds that the facility is in substantial compliance with the requirements under subsection (b)(1)(A), or (B) the Secretary terminates the agreement under this title with the facility.

"(3) A facility dissatisfied with a determination by the Secretary under paragraph (1) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).".

SEC. 13. AMENDMENT RELATING TO FRAUD INVOLVING MEDICARE SUPPLEMENTAL INSURANCE.

Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is amended by striking "knowingly or willfully" and inserting "knowingly and willfully".

SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.

(a) REGULATIONS.—The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).

(b) CRIMINAL VIOLATION.—Section 1128B(b)(3), as amended and redesignated by section 4 of this Act, is further amended—

(1) by striking "and" at the end of subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting "; and", and

(3) by adding at the end thereof the following new subparagraph:

"(D) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987.".

SEC. 15. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act.

(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning more than thirty days after the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendment have been published by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet

the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3) Subsection (j) of section 1128A of the Social Security Act (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act, as amended by section 3(a)(1)(F) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984.

(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII if payment to the person has been denied under section 1862(d) of the Social Security Act, as in effect before the effective date specified in subsection (a).

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. GRADISON. Mr. Speaker, reserving the right to object, and I shall not object, I would like to indicate to the Members that this measure, H.R. 1444, the Medicare and Medicaid Patient and Program Protection Act has, in effect, already passed this body twice.

Its first passage came in the 99th Congress, in the form of H.R. 1868, which was sponsored and developed primarily by our former colleague, Henson Moore of Louisiana. Only time prevented its approval by the other body.

The core of H.R. 1444 is the same as H.R. 1868. The measure has been refined and, I believe, improved during this session of Congress. It was passed earlier this year in this house by a vote of 402 to 0.

The other body has added an amendment with which I agree. Essentially, it provides in certain cases a hearing process which makes the bill even more reasonable.

Many Members, too many to thank adequately in this timeframe, have contributed to this legislation. It has been a team effort, and that effort is about to pay off with enactment and signature into law.

I think that everyone who has worked on the bill would agree that both the Medicare and Medicaid Programs, as well as their beneficiaries and recipients, will be much better off when the legislation does become law.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Tennessee [Mr. DUNCAN], the distinguished ranking Republican member of the Committee on Ways and Means.

Mr. DUNCAN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to join my colleague, Mr. GRADISON, in supporting the Medicare and Medicaid Patient and Program Protection Act of 1987, H.R. 1444, as amended by the Senate.

H.R. 1444 recodifies and strengthens the antifraud provisions of the Medicare and Medicaid law. The bill will protect program beneficiaries from unscrupulous or unfit physicians, hospitals, and other medical care providers.

The Senate amendment to H.R. 1444 adds in certain cases a hearing process which enhances the reasonableness of the bill.

The legislation before the Chamber has been developed by many Members of this body as well as the Senate. I want to congratuate them on work well done.

Mr. Speaker, I want to particularly cite the effort that my colleague, Mr. GRADISON, has made in the development of this measure. It is rare that a member of the minority successfully shepherds legislation through this body.

The fact that H.R. 1444 bears BILL GRADISON's name as primary author stands as a real tribute to his ability and the esteem with which he is held by his fellow Members of the House of Representatives.

I should also cite a former Member of the House, Representative Henson Moore. H.R. 1444 had its roots in the 99th Congress, in the bill H.R. 1868, which Henson Moore sponsored. He did a remarkable job in directing that legislation through the House. Unfortunately, the "clock ran out" at the end of the session before the bill could be passed by the Senate.

The Medicare and Medicaid Programs will be much improved with the passage of this legislation. BILL GRADISON and Henson Moore are due much credit for that and the many other contributions both gentlemen have made to the management of the most important Federal health programs.

Mr. GRADISON. Mr. Speaker, I yield to the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, today I am pleased to join with Mr. GRADISON, the ranking member of the Ways and Means Health Subcommittee and the chief sponsor of the bill, with Mr. STARK and many other Members to adopt the Medicare and Medicaid Patient and Program Protection Act of 1987, H.R. 1444, as amended by the Senate.

In 1984 a General Accounting Office report documented gaps in existing law which allow unfit physicians to continue to provide services to medicare beneficiaries. Following hearings, the House unanimously approved legislation in 1985. Unfortunately, action was not completed in the 99th Congress.

On June 2, the House passed H.R. 1444 by unanimous consent. Last week, the Senate passed an amended version.

The Senate bill contains only one minor substantive change regarding a pretermination hearing. This Senate provision is reasonable.

I therefore urge the House to approve H.R. 1444 as amended by the Senate to strengthen protections against fraud and abuse in the Medicare and Medicaid Programs.

□ 1055

The gentleman from California [Mr. STARK], chairman of the Health Subcommittee, will further discuss the provisions of the bill.

Mr. GRADISON. Mr. Speaker, under my reservation of objection, I yield to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, today I am pleased to join with my colleagues to urge adoption of the Medicare and Medicaid Patient and Program Protection Act of 1987, H.R. 1444, as amended by the Senate.

The ranking member of the Health Subcommittee, Mr. GRADISON, is to be commended for taking the lead in developing this important legislation.

The Medicare and Medicaid Patient and Program Protection Act of 1987 has wide bipartisan support. With this legislation, the Secretary of Health and Human Services will have clear authority to protect patients from incompetent providers. At the same time, the Secretary will have new power to protect Federal health benefits programs from fraud and other abuses.

The bill requires the Secretary to exclude from Medicare and Medicaid those providers convicted of crimes related to—

Fraud or abuse in the provision of services under Medicare or Medicaid; and

Patient neglect or abuse.

The bill also authorizes exclusions in a variety of other situations, including—

Conviction of other crimes related to fraud, theft, or controlled substance abuse;

Revocation or suspension of license;

Submission of excessive charges, claims for unnecessary services, or substandard care;

Failure to provide necessary care in the case of a health maintenance organization;

Submission of false and fraudulent claims; and

Default on health professions education loans.

The bill would further strengthen the ability of the Secretary to deal with program and patient abuse by—

Establishing new grounds for criminal and civil penalties under Medicare and Medicaid;

Requiring Federal and State agencies to exchange information concerning individuals convicted of program abuse or subject to disciplinary action; and

Requiring the Secretary to promulgate regulations to clarify the circumstances that will serve as the basis for sanctions under the Medicare-Medicaid antikickback provision.

On June 2, the House passed H.R. 1444 by unanimous consent. Just last week, the Senate passed an amended version.

The Senate bill contains only one minor substantive change from the House bill. The Senate bill requires a predetermination hearing for exclusions from the Medicare program based on a violation of the antikickback provision. The House bill allows exclusions without a pretermination hearing. Because there is no threat to health or safety, the Senate provision is reasonable.

I therefor urge the adoption of H.R. 1444 as amended by the Senate to strengthen protections against fraud and abuse in the Medicare and Medicaid programs.

Mr. GRADISON. Mr. Speaker, in conclusion I want to thank my distinguished chairman of the Health Subcommittee, the gentleman from California [Mr. STARK], for his support and leadership on this important measure.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MCCURDY). Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table.

PRICE-ANDERSON AMENDMENTS ACT OF 1987

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 234 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1414.

□ 1058

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents, with Mr. HOYER, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Wednesday, July 29, 1987, section 2 of the text of H.R. 2994, which is considered as an original bill for the purpose of amendment, was open to amendment at any point.

Are there any further amendments to section 2?

Mr. UDALL. Mr. Chairman, I had promised the leadership on both sides that we would endeavor to finish this bill by early afternoon, and I hear the sound of jet engines roaring at National Airport, I think.

In order to expedite the business of the House today, Mr. Chairman, I ask unanimous consent that notwithstanding the rule, the gentleman from Minnesota [Mr. SIKORSKI], now be permitted to offer his amendment to section 11 and that the time be equally divided between himself and the gentleman from New York [Mr. LENT].

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. LENT. Mr. Chairman, reserving the right to object, and I will not object, but I was going to suggest to the distinguished chairman that in view of the time of day and the pending weekend recess, perhaps the time on some of these amendments could be limited further.

Mr. UDALL. There is no statute that prevents or requires Members to take all of the time.

Mr. LENT. I would just ask the gentleman from Minnesota who will offer this first amendment, as I understand it, if he would agree to 40 minutes as a limitation rather than 1 hour?

Mr. UDALL. Mr. Chairman, I amend my request to 40 minutes.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. SIKORSKI. The Chairman, there will be objections. We will stick with the agreement reached yesterday and today.

Mr. LENT. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona that the Sikorski amendment be taken out of order, and that the time be limited to 1 hour, one-half to the gentleman from Minnesota [Mr. SIKORSKI], and one-half to the gentleman from New York [Mr. LENT].

There was no objection.

Mr. UDALL. Mr. Chairman, the second request is that following the Sikorski amendment the Walgren series of amendments be in order and debate be limited to 20 minutes, 10 minutes on each side.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENT OFFERED BY MR. SIKORSKI

Mr. SIKORSKI. Mr. Chairman, I offer an amendment pursuant to the unanimous-consent request just agreed to.

The Clerk read as follows:

Amendment offered by Mr. SIKORSKI: Page 28, strike lines 21 through 24 and insert the following:

"(D) A court may not authorize the payment of legal costs related to any nuclear incident from the amount of financial protection required by subsection b. unless—

"(i) the court in its discretion determines that the payment of such costs is equitable and would not jeopardize the compensation of victims of such incident; and

"(ii) such costs are authorized in accordance with paragraph (2).

Mr. SIKORSKI (during the reading). Mr. Chairman. I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The CHAIRMAN pro tempore. The gentleman from Minnesota [Mr. SIKORSKI] will be recognized for 30 minutes and the gentleman from New York [Mr. LENT] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. SIKORSKI].

Mr. SIKORSKI. Mr. Chairman, I yield myself 7 minutes.

Mr. Chairman, here is how Price-Anderson will work if the industry has its own way: You are the victim of a nuclear accident. You have lost your home. You have lost your business, your property, perhaps your loved ones. Your neighbors have suffered a similar fate. The immediate damage to your community and to its environs is measured in the tens of billions of dollars, and in the future inestimable damages await as radiation sickness and cancers run their terrible course.

Full compensation is needed for your very real damages, but Congress has passed a law, and it is called the Price-Anderson Act. That says that only a few cents on the dollar will be paid.

Oh, sure, the Government has made a paper promise that the taxpayers'

pockets may well be tapped to bail out the nuclear utilities and pay you closer to a dollar for a dollar's damage. But everything from the runaway budget to the trade deficit gives you little faith in commitments like this.

Undaunted, you sue for the fraction that is your due for the devastation wreaked upon you and your family. And you and your neighbors face a battery of high paid industry lawyers. They delay compensation for your claim. Being good at their job, the lawyers employ an arsenal of legal tactics—pleasant and not so pleasant—all considered "reasonable" by our courts: discovery, depositions, motions.

Leaping over the hurdles strewn in your path after 5, maybe 15, years you finally prove the extent of your damages and injuries, their cause and your right to restitution.

You go to pick up the check but there, standing in front of you, is the pinstriped dandy whom you faced in court, the one that had you and your family video taped and deposed and examined. Smiling, he pockets a piece of paper with lots of big zeros on it. He turns to you and says, this is my fee. I did a good job defending my client."

He did. Then he climbs into his nice car and zooms away to his nice home to be with his nice family.

You step up to the window and ask for your check. Upon examination, you discover it has about half as many zeros as the check for the lawyer, and you ask, "Is that it?"

"That's it, "says the clerk. "You are just a victim. That guy was the industry lawyer."

"But this is for victims' compensation, and they did this to me. They burned up my property, they burned up my family, then the lawyers burned up my time and money in court. Why do I get less than the industry's lawyers?"

"Because this is the 1980's. Just because you had some bad luck, he should suffer, too?"

That is Price-Anderson without the Sikorski amendment.

Mr. Chairman, my amendment simply states that the court may not authorize payment of legal costs unless it determines three very good things. First, that the payment of such costs is equitable.

Second, that it would not jeopardize the compensation for victims.

Third, under the language of the legislation before us, the Moorhead language, that the costs are reasonable, the litigation not frivolous or duplicative, or taken in bad faith.

In short, if there is not enough money to go around after a nuclear accident for the victims from the victims' compensation fund, my amendment ensures that victims will be paid before industry lawyers.

This is one of those radical concepts that my colleagues were warned against in the early arguments made on this legislation—one of those strange ideas that our parents probably told us to stay away from as we were being reared. The strange idea that if there are sufficient funds to compensate victims, the court will award industry legal fees too, but if there are not, the victims come first. That is a compromise from the original legislation introduced by our colleagues, the gentleman from Arizona [Mr. UDALL] and the gentleman from Indiana [Mr. SHARP].

It is a compromise from the position adopted by Congress in 1975 which outlawed legal costs.

Some inaccurate charges have been leveled at my amendment and they come from very strange quarters. Those who have long opposed full compensation to victims, who cap the victims' fund, and want unlimited costs for the industry's lawyers taken out of the victims' compensations fund, now come to us and argue that their concern is for the victim, and this pure and noble and sterling concern for the victims leads them to oppose the Sikorski amendment.

Let us set the record straight. My amendment does nothing to restrict the rights of plaintiffs to free access to legal representation. Ask the lawyers and the advocates for the victims, they support the Sikorski amendment. My amendment makes sure that taxpayers do not have to pick up the expenses and costs of industry lawyers before victims. Ask the National Taxpayers' Union, and taxpayer advocates, they support the Sikorski amendment.

Mr. Chairman, it is simply crazy, it is simply wrong, that we would even consider, let alone vote to allow, full compensation for industry lawyers from the victims' funds but not for the ordinary citizens who are the victims of nuclear accidents.

To any of my colleagues who were 1 of the 300 who voted against the Eckart amendment yesterday to cap Price-Anderson, at least make sure that the victims get the money in the cap and not the industry lawyers who can turn to their clients for fees.

Industry lawyers can turn to their clients for fees and their clients can well afford to do without this legal subsidy. But victims of a nuclear accident under Price-Anderson have no place else to turn. There is only the amount of money we choose to make available.

Do members want to give it to the industry lawyers or to the victims?

If the Members want to give it to the lawyers, vote "no" on Sikorski. If the Members want to give it to the victims, vote "yes" on Sikorski.

Mr. LENT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all, the issue that I wanted to raise with the distinguished author of this amendment concerns the point that he would have you believe that his amendment was only going to limit the payment of attorneys' fees to industry lawyers, the so-called pinstriped lawyers, as he characterized them.

As I read the amendment of the gentleman from Minnesota [Mr. SIKORSKI] it appears that it would limit the payment of all legal costs whether it be on behalf of plaintiff or the defendant.

Let me just quote very briefly from the gentleman's amendment.

"A court may not authorize the payment of legal costs—" and then it goes on. It does not say the defendant's legal costs, and if the gentleman would read the definition of legal costs, which is in the bill, legal costs means, "the costs incurred by a plaintiff or a defendant."

So the thrust of the amendment of the gentleman from Minnesota [Mr. SIKORSKI], and he may not realize this, and I would be happy for him to make an amendment to his amendment, is to limit the payment of legal fees that would be available out of this fund for either the plaintiff or the defendant.

So, Mr. Chairman, I oppose this amendment to change the way legal costs are handled under Price-Anderson. Despite the intentions of the proponents of this amendment, I do not believe this amendment will maximize compensation to victims of a nuclear accident.

H.R. 2994 provides for rigorous court supervision of all costs of both the defendants' and the plaintiffs' counsel to assure that only reasonable and equitable costs are paid.

□ 1110

In addition, the bill increases the amount of financial protection by 5 percent to cover claims and costs if necessary.

Mr. SIKORSKI's amendment would prohibit payment of attorney fees as I said including plaintiff attorney fees, in the event of a major accident. But it is in just such circumstances that a victim is least likely to have personal resources available to hire an attorney. If a victim cannot assure his or her attorney that he will be paid, then his ability to obtain representation when he is most in need will be hurt.

This amendment will also hurt legitimate plaintiffs by removing obstacles to the filing and payment of frivolous claims. If under Sikorski, the costs of investigating claims cannot be paid from Price-Anderson moneys, neither insurance companies nor utilities will investigate claims because it would be at their own expense. Consequently, claims will be paid as they are presented. Thus, frivolous claims could well use up the Price-Anderson fund and legitimate victims have to wait

until congressional enactment of a supplemental compensation plan. This is a serious concern as frivolous claims we now know were filed after Three Mile Island and later withdrawn after investigation paid for by the fund revealed them to be frivolous.

Compensation of victims could be further impaired if insurance companies withdraw from the pools. Many foreign and domestic insurance companies have withdrawn from the pools in recent years. Enactment of this amendment could well be the final straw for remaining companies. If the costs of processing claims are not covered insurers will probably withdraw from the pools, thus decreasing the total amount of money available for claims. They might also decline to administer the second layer of reimbursement which would lead to delay in payment of claims while an alternate method to handle claims was developed.

So, the current provision requires that legal costs be supervised and minimized. It provides a workable system with sufficient safeguards to protect victims of a nuclear accident. I urge my colleagues to reject this amendment.

Mr. SIKORSKI. Mr. Chairman, will the gentleman yield?

Mr. LENT. I would be happy to yield to the gentleman from Minnesota for a question.

Mr. SIKORSKI. I thank the gentleman for yielding.

I just want to reply.

Mr. LENT. Just ask me a question. I am only going to yield for that purpose.

Mr. SIKORSKI. The gentleman is aware that I never made the claim that plaintiff's legal costs were not covered by the Moorhead language with regard to reasonableness and frivolity and the rest of it?

The gentleman must be aware, is he not, that I have made the claim that the plaintiff's attorneys are paid out of the victim's recovery. That is the contingency process. What the gentleman is proposing here and what I find unreasonable is that victims should not only pay their attorneys out of their recovery but they should pay the industry's lawyers for opposing their claims and they should be paid before the victims get any money.

Mr. LENT. Let me answer in this way: The gentleman's amendment by its clear wording, and you do not have to be a Harvard law school graduate to understand what the gentleman's amendment says, it says, "A court may not authorize the payment of legal costs," and then it goes on. It does not say only the defendant's legal cost. Then when you look at another section of this bill, which the gentleman does not purport to amend, which defines legal costs, the definition says that the term legal costs means "the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling or defending claims or suits for damages arising under such section." So I simply point out to the gentleman and to our colleagues who may be listening to this debate that the purport of the gentleman's amendment is to hurt the plaintiffs, the victims as well as the defendants.

Mr. Chairman, I reserve the balance of my time.

Mr. SIKORSKI. Mr. Chairman, I yield myself 1 minute to respond to the gentleman.

Here we have the "Mother Theresa" argument. We have the very people who come to us and want to cap victims so they do not get a full dollar on the full dollar's worth of damage and then they want to take money out of the victim's compensation fund to hire lawyers to labor to hurt victims again to make sure they do not get their claims processed, to make sure they do not get their full dollar on the dollar fund.

Now they are coming to us and telling us they are on the side of the victims. I simply suggest that if anyone has any confusion about where the plaintiffs are, where the victims are in terms of the Sikorski amendment, they should look to them. They are wholeheartedly, unanimously supporting the Sikorski amendment. It is those who oppose the victims, who oppose the plaintiffs, the defense lawyers, who are opposed to the Sikorski amendment.

Mr. Chairman, I yield 4½ minutes to the gentleman from Arizona [Mr. UDALL], the distinguished chairman of the Committee on Interior and Insular Affairs.

Mr. UDALL. It is easy to beat up on lawyers. I enjoy it myself. There is great temptation this morning to join in this party.

Mr. Chairman, as Speaker Sam Rayburn once said, "A town too small to support one lawyer can always support two."

We tried when Price-Anderson was written years ago, we tried to take the lawyers out of it. It is not a system with long delay, not a system where you see all the difficulties you have in the negligence field. The law was written so that you could get in and have this insurance pool that is operated fairly well by the major insurance companies, you get yourself in this pool and you do not have to have lawyers. Payment will be made promptly and adequately.

When Three Mile Island happened, the lawyers and the agents who were involved with this, who had experience with it, were paying money out in Pennsylvania to farmers and local residents within a matter of days. The problem has had some difficulties, some weaknesses. But I want to report that the biggest issue—in the Energy Committee and in our committee—the biggest issue was this business of attorney's fees. And we heard in our committee from Mr. SIKORSKI's allies and he very eloquently presented the case when he got to the Energy Committee and they made some further modifications in the direction needed.

So you now have in the bill a modified balanced treatment of claims. The court is given discretion under prior criteria.

You can read this in the report pages 121 to 123 I think it is, you can read in there—the weapons that they have available. In addition to that, we raised the limit to $7 billion which insures that there is less likelihood of money not being available to pay the claims of deserving citizens who have been damaged in one of these nuclear accidents.

Mr. Chairman, I am not the authorized spokesman for the administration on these matters, but I call to the attention of my colleagues a message which has just come to the Speaker's desk from the Department of Energy. I will put the entire letter in the RECORD. This message is signed by John S. Herrington, the Secretary of Energy. He says:

I am writing to urge the House to reject any amendments to H.R. 1414, the Price-Anderson Amendments Act of 1987, which may be offered during floor consideration. We are particularly concerned about amendments that would reach beyond the basic compensatory purpose of Price-Anderson and would threaten to undermine the carefully fashioned consensus bill (H.R. 2994) worked out between the three cognizant House committees and the Administration.

The legislation that has been sent to the House floor is the result of three years of extensive hearings, discussions, and negotiations. Price-Anderson is essential to the continued availability of nuclear power as an energy supply option and as an instrument to facilitate the Department's research and national security activities. The Administration supports reauthorization of Price-Anderson and supports the bill currently before the full House.

However, we strongly oppose all efforts to add to the bill any provision to impose new liabilities on Department of Energy (DOE) contractors, such as subrogation or penalties, to establish unlimited liability in the unlikely event of an accident, or to waive the defenses available under the Federal Tort Claims Act. If such provisions are contained in the bill placed before the President, I will recommend to the President that he disapprove the legislation.

Although we share the objective of ensuring that DOE contractors conform their conduct to the highest standard of safety and care, we are convinced that the inclusion of any subrogation or penalties provision would strongly discourage contractors from commencing or continuing their relationships with the Department. Such noncompensatory provisions would be totally inconsistent with the objectives of Price-Anderson and would impose severe burdens on the Department's research and national security activities.

We also object to any amendments that would eliminate the so-called "limitation on liability" by no longer requiring affirmative Congressional action to compensate the public when it appears that claims may exceed the statutory cap. Enactment of the House consensus bill without further amendment would provide the public more than a ten-fold increase in the amount of financial protection afforded under current law. If the cap were ever exceeded, the absence of Congressional involvement in the distribution of funds could lead to endless claims on the U.S. Treasury, rendering the system of compensation both inefficient and unpredictable.

In addition to these two provisions, the Administration strongly opposes any provision which would, for liability purposes, treat the Department as if it were one of its own contractors. Changing the rules of Government liability, struck long ago in the Federal Tort Claims Act, would represent a major departure from existing law, upsetting well-established principles that have governed this area of law for years.

In addition to these inimical provisions, we are also opposed to any amendment which would restrict payment of defense costs from the compensation fund until all other claims are paid. Defense costs in the unlikely event of an accident are extremely difficult to predict, making coverage of such costs under private insurance contracts virtually impossible to obtain. Coverage of these costs under Price-Anderson would prevent the inability to obtain such insurance from discouraging the continued operation of nuclear facilities and future investment in such facilities.

I encourage the House to renew the Price-Anderson Act without counterproductive provisions designed to legislatively address issues that are unrelated to the compensatory objectives of the Act.

What has troubled me during the process of this bill is that there has been a continuing attempt to make a complicated system out of Price-Anderson which was designed to be a simple system. Price-Anderson, you could write on the back of an envelope what it does.

It says we need nuclear plants, it is our national policy to build them. We want to assure people living around those plants who live in fear, that if an accident happens damages are going to be paid. There was a tradeoff here. The tradeoff is no fault, you do not have to prove fault. You get your money for the damage.

The other part of the bargain, apart from no fault is limitation on damages. Nobody, no insurance company is going to pay an unlimited amount under a no-fault system. So ours is a no fault provision with the sensible limitation on damages. We protect the plaintiff, the damaged people. The two committees of jurisdiction have considered and debated at great length versions of the Sikorski amendment and I urge my colleagues to defeat it as the two committees did.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. MOORHEAD], the distinguished ranking member of the Subcommittee on Energy and Power.

Mr. MOORHEAD. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to the proposal to prohibit payments of legal costs from Price-Anderson moneys. Despite the rhetoric accompanying the proposal, this amendment will actually harm victims of an accident by eliminating the deterrent which currently exists to the payment of frivolous claims and by causing the insurance companies, who provide swift compensation in the event of an accident, to abandon nuclear coverage.

Under H.R. 2994, in the event of a serious accident, all legal costs of both plaintiff and defendant attorneys, will be rigoroulsy scrutinized to assure that they are reasonable and not the result of delaying tactics or needless actions. Under the compromise agreed to in the Energy and Commerce Committee, if claims will exceed the limitation on liability, a surcharge of 5 percent will be assessed against the utilities to help pay claims.

The amendment before us now says that legal costs, even if reasonable, cannot be paid in the event of a major accident. At first reading, this sounds like a policy that will help victims of an accident. But in reality this provision will harm victims. This amendment will remove the check which now exists to prevent payment of frivolous claims. Under the current law and under H.R. 2994 insurance companies administer the program, distributing both insurance funds and retroactive assessments paid by utilities. If this amendment is adopted, the cost of investigating claims would no longer be reimbursed. No one—neither the insurance companies nor utilities—will have any incentive to investigate claims to assure their legitimacy. Instead, claims will be paid on a first-come-first-served basis, legitimate or not, until the limit on liability is reached. A real victim who files late in the process will find his compensation delayed until Congress enacts a supplemental plan.

Most of the defense costs involved under Price-Anderson's no-fault system are costs of investigating and settling claims incurred by insurers, not costs of numerous defense lawyers. Certainly regarding payment of these costs is necessary before an organization will run the system. If payment of legal costs are prohibited, many insurance companies will withdraw from the pools which provide the first layer of protection and will decline to administer the second layer of protection.

This will harm victims because the first layer of protection, $160 million, provided by the insurers who are experienced in processing claims, permits a rapid response to an accident. After Three Mile Island, the insurance companies set up offices within 72 hours of the accident to begin processing claims. If these insurers do not administer the deferred premium system, even greater delays in compensation victims will occur as an alternative system to pay victims is somehow organized.

This amendment could also harm the ability of a victim to hire an attorney because the victim may not be able to assure that his or her attorney will be reimbursed. And if a victim hires an attorney with money not from the Price-Anderson fund, then there will be no court supervision of those fees to assure that they are reasonable and as small as possible.

I urge my colleagues to vote against this amendment. The current provisions of H.R. 2994 contain an equitable compromise which assures strict court supervision and a fairly administered system.

Mr. SIKORSKI. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I wholeheartedly support the Sikorski amendment to the Price-Anderson Act. This essential amendment would ensure that victims of a nuclear accident are compensated before the hired guns of the nuclear industry.

Attorneys working for the nuclear industry should not be compensated from a public fund that is needed to assist the victims of a nuclear accident. It is only fair and reasonable that those people who are the actual victims of a nuclear accident receive compensation for their suffering and trauma. The emphasis must be on helping the victims of the industry, not those working for the industry.

Without the Sikorski amendment, the Price-Anderson Act is little more than a public subsidy for the nuclear industry's legal costs. This contradicts basic concepts of equity and responsibility.

I urge my colleagues to support the Sikorski amendment which will introduce fairness into how people are treated under the Price-Anderson Act.

□ 1125

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, I thank the gentleman for yielding this time to me.

Not being an attorney, I have a certain amount of sympathy for what the gentleman from Minnesota [Mr. SIKORSKI] is trying to do in this particular amendment. My major concern is, if I put myself into a victim's spot, how am I going to obtain legal counsel if indeed what I am reading into this amendment is actually true.

If the author of the amendment, the gentleman from Minnesota, would be so kind, I would like to just ask him a

couple of questions, and maybe I can get some of this cleared up.

Mr. SIKORSKI. Certainly, Mr. Chairman, if the gentleman will yield.

Mr. SCHAEFER. Mr. Chairman, does the gentleman intend this amendment to apply to victims' attorneys and lawyers as well as industry?

Mr. SIKORSKI. Mr. Chairman, if the gentleman will yield, that is a good question. The language of the law currently requires in most instances court approval of any costs. The language of the legislation that is before us that we are not amending requires court approval of legal costs of either the plaintiff or the defendant, that they be reasonable, and that they be incurred in a nonduplicative and nonfrivolous manner and not in bad-faith situations. I think that is great, that is reasonable, and that is not only the norm and standard practice but something that we should embrace here.

Mr. SCHAEFER. Mr. Chairman, may I ask the gentleman this question: I am looking at the amendment here, and I would ask the gentleman how he defines the word, "jeopardize"?

Mr. SIKORSKI. Mr. Chairman, if the gentleman will yield, his concern seems to be that somehow by the language, "jeopardize victim's compensation," we are impinging upon the ability of plaintiffs' lawyers to recover. That is just not the case. We know from the victims and the plaintiffs that they get their recovery in the contingency or class action process only after the victims have been paid. They are not harmed by this amendment. What we find unreasonable is that we are asking the victims to get any recovery from a capped fund of $7.3 billion—receiving less than a dollar for a dollar's worth of damage—and pay his or her attorney out of that recovery, and then have to pay, before they ever get that money, the attorneys for the people that do not want them to recover at all, that is unreasonable.

Mr. SCHAEFER. Mr. Chairman, if I may reclaim my time, when I look at the word, "jeopardize" and I read the gentleman's amendment, I see that this could be applied not only to cases where we would reach the $7 billion threshold but also where we have maybe 20 or 30 people involved in $2 million claims, and if indeed we kick the word, "jeopardize," into it, how is that victim going to ever employ an attorney to represent him, if indeed this is true?

Mr. SIKORSKI. Mr. Chairman, if the gentleman will yield, the victims or the plaintiffs, do not have any problem, I say for the 15th time, with this language. Their recovery comes on a contingency basis or, as in other cases, with a class action. I have been involved in litigation like that, and the court right now is involved in supervising their recovery, and the victim's compensation itself could very well be interpreted or is interpreted as victims compensation——

Mr. SCHAEFER. Mr. Chairman, if I may reclaim my time, I read in the gentleman's "Dear Colleague"—and we have exchanged a couple of those on this—that he is saying that this does not kick in until we reach the $7.3 billion threshold, am I correct?

Mr. SIKORSKI. No, no. With legal costs, the Moorhead language, which requires the judgment of reasonableness, kicks in at all times without my amendment.

Mr. SCHAEFER. The Moorhead language. Yes, I understand.

Does the Sikorski amendment limit payment of attorney fees only in major accidents where damages exceed the $7.3 billion as per the gentleman's "Dear Colleague"?

Mr. SIKORSKI. That is right. It is designed only to kick in in those certain circumstances.

The CHAIRMAN pro tempore (Mr. HOYER). The time of the gentleman from Colorado [Mr. SCHAEFER] has expired.

Mr. LENT. Mr. Chairman, I yield 1 additional minute to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, my problem is this: if indeed we should have an accident of this magnitude, we are virtually going to have a class action. We are going to have a multitude of people out there who have claims against defendants. A judge is going to sit there and say, "I have 500 or 700 people out here, and I am not going to award any claims until I can see what the final version of this is going to be either as to claims or attorneys' fees or anything else."

Mr. SIKORSKI. Mr. Chairman, will the gentleman yield? That is exactly what the law says.

Mr. SCHAEFER. Just a moment.

The CHAIRMAN pro tempore. The gentleman from Colorado has not yielded to the gentleman.

Mr. SCHAEFER. Mr. Chairman, if we look at page 27, it is saying that the contingency fees can pay public liability claims and legal costs. What happens if we exceed all the $7 billion and all the contingency fees go to claims and there is nothing left for legal costs? Now, what is going to happen as far as the attorney fees are concerned?

Mr. SIKORSKI. Mr. Chairman, will the gentleman yield?

Mr. SCHAEFER. My time has just about expired. I appreciate the gentleman's intent on this, but I think that we are certainly getting to a point where there is going to be a problem.

Mr. SIKORSKI. Mr. Chairman, the gentleman asked me a question.

The CHAIRMAN pro tempore (Mr. HOYER). The time of the gentleman from Colorado has expired.

Mr. SCHAEFER. Mr. Chairman, I would be glad to yield if I have any time left.

The CHAIRMAN pro tempore. The gentleman's time has expired.

Mr. SIKORSKI. Mr. Chairman, I yield myself one-half minute.

Mr. Chairman, the gentleman of Colorado has stated concerns that make no criticism of what I am doing. The concerns he has with large cases and complex litigation are already handled in the law and in the legislation before us and those provisions are not affected by my amendment. I simply ask the gentleman to read the legislation. Section 170(n) describing judicial procedures is not affected by my amendment. And the language on the reasonableness of attorneys' fees in section 170(o) in this legislation is not affected by my amendment. The gentleman asks reasonable questions, but I am not changing the process to handle these huge lawsuits or the court review of reasonable legal costs, and I hope the gentleman does not damn my amendment for what the existing law and the pending legislation does, because it does not deserve it.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Chairman, I rise in opposition to the Sikorski legal costs amendment. The proponents of this amendment have advanced at least two misleading arguments.

First, lawyers don't get paid first under Price-Anderson. Despite Congressman SIKORSKI's rhetorically appealing story, wealthy attorneys do not collect before the helpless victims.

In a major nuclear accident, the current Price-Anderson law mandates that claims and costs only be paid if they comply with a court-approved distribution plan. According to the statute, the distribution plan must prioritize claims to "insure the most equitable allocation of available funds." This equity-driven and court-approved distribution plan is the mechanism for paying claims—not a perverse notion of lawyers collecting before victims.

The committee bill, in addition, prohibits the award of any legal costs until after they are expressly approved by the court. This new provision also mandates that costs only be approved if they are reasonable, equitable, and not the product of bad faith, frivolity, duplication, or delay. These new court standards should deter any attorney from engaging in legal tactics designed to unnecessarily delay the speedy settlement of claims.

Second, the Sikorski amendment does not help the victims recover from injuries sustained in a nuclear accident. The amendment, if anything, complicates the task for the plaintiff

by reducing the chances his attorney will be compensated.

The Sikorski amendment bars the awards of legal costs which are expressly defined in the committee bill to include both defendant and plaintiff costs. Accordingly, the court could refuse to award plaintiff attorney costs from the overall settlement even if they are reasonable and equitable. This amendment could harm the ability of a victim to hire an attorney when most needed, since attorneys would be unwilling to represent prospective accident victims unless there was an assurance that their costs and time would be paid for.

The Sikorski amendment is not as simple as it sounds. Upon close examination, it's clear that lawyers are not paid first under Price-Anderson and that the amendment could actually jeopardize the rights of victims because it applies to plaintiff attorneys.

I therefore urge my colleagues to vote against the Sikorski legal costs amendment.

Mr. SIKORSKI. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Chairman, I thank the gentleman for yielding this time to me, and I commend the gentleman from Minnesota [Mr. SIKORSKI] for a very thoughtful amendment.

I have been impressed that the Members who voted to keep a limit on recovery yesterday are today so worried about the impact the recovery they have imposed on the victims will have on the victims. In fact, as I hear today's concern for the plaintiffs over this amendment, I find that there is a new danger that people may face if they are the victims of a nuclear accident; they may drown in crocodile tears if they come anywhere near the House of Representatives.

All of a sudden the poor victims, whose interests, it seemed to me, did not seem to be terribly important yesterday, are, we are told, motivating the Members, and I am sure that is an honest mistake they are making.

What the gentleman from Minnesota is doing is perfectly sensible. What he is saying is that if the cap that was imposed against my objection in the face of his objection, if the very thoughtful amendment of the gentleman from Ohio [Mr. ECKART] had been adopted yesterday, we would not be here. We are here because of the cap, and as the gentleman from Minnesota said, some of the things Members are criticizing are not the result of his amendment; they are the result of the cap that was kept in the bill yesterday. So he is hardly to be blamed for that. We have got the cap, and he is trying now to deal with it. He is being subjected to very inconsistent arguments.

I know that you can plead in the alternative in court, where you can offer two totally opposite arguments and hope the judge will pick one. But I do not think we ought to do that on the floor of the House. One Member told the gentleman from Minnesota his amendment was going to be kicking in much too early, and another Member said it was unnecessary because we would never need it. I would hope there would be some method by which Members on the other side could pick one or another of those and sit on it.

What the gentleman said was very simple and straightforward. We know the plaintiff's lawyers are going to be paid in almost all the cases only from recoveries. So the argument that the plaintiffs will recover and there will be no money left to pay the lawyers is a mistake. The contingency fee is what will motivate them. What we are saying to the people in the nuclear industry is: "You are the ones who put the cap on. We didn't want a cap. We wanted you not to be subsidized by a cap. We wanted this to be open. But if you are going to have a cap after you voted one and there are going to be limits, you should not have your lawyers getting a piece of that limited pie before the victims are fully satisfied."

That is the only circumstance in which it would come into play. If the cap is reached and every claim cannot be satisfied fully, there would have to be an apportionment. What we are saying is that before you deny any victim any recovery to which he or she has been found to be entitled, you will not pay the defense lawyer.

Will the defense lawyers then be applicants for the homeless shelters? I do not think so. We are not talking about them; we are talking about the corporate concern about that, and I share the views of my good friend, the gentleman from Texas [Mr. HALL], that it is not a good idea to cuss the lawyers. None of us has a lifetime lock on this job. Who knows, we might be practicing one day, God forbid. But it is not cussing the lawyers to point out that these defense attorneys will not go hungry.

The CHAIRMAN pro tempore. The gentleman from New York [Mr. LENT] has 12 minutes remaining and the gentleman from Minnesota [Mr. SIKORSKI] has 13 minutes remaining.

□ 1140

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Tennessee [Mrs. LLOYD].

Mrs. LLOYD. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in opposition to this amendment.

Mr. Chairman, to me this is putting the cart before the horse, because the cost of administering claims and defending against nonmeritorious claims is as much a part of Price-Anderson as is the victims' compensation. This is the mechanism.

If we handicap the process by excluding reasonable legal costs, then we are going to be jeopardizing the amount of funds that will be available to pay the meritorious claims. This amendment could, therefore, harm the true victims.

If the utility cannot pay for administering claims, they will not get administered, and the victim will suffer again.

The mechanism in this bill to address a situation in which the $7 billion is inadequate to compensate the victims is for Congress to take appropriate action.

I do not think this amendment will provide adequate protection for the victims. Under the bill, as approved by the committees, the legal costs must be reasonably incurred.

I, therefore, oppose the amendment.

Mr. SIKORSKI. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BOUCHER].

Mr. BOUCHER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of the gentleman from Minnesota's amendment. In the event of a nuclear accident which exceeds the bill's $7 billion cap on compensation, the Sikorski amendment would prohibit the payment of attorneys' fees from the compensation pool.

Equity, standard practice, and the spirit of compromise should guide our consideration of this amendment. If a nuclear accident exceeds the $7 billion cap—a not unlikely scenario—who wants to explain to their constituents that they won't be compensated fully because the industry's attorneys are the only ones guaranteed full compensation?

H.R. 1414 is touted as providing 7 billion dollars' worth of coverage to victims of nuclear accidents. This portrayal is not accurate. Since the bill allows attorney fees to be paid first, the funds remaining to compensate victims would obviously be less. The result under the present bill? Victims would not be fully compensated, but industry's attorneys would stand at the front of the line receiving checks providing full payment of their fees.

In normal litigation, defense costs are not deducted from insurance coverage for plaintiffs. Price-Anderson is the rare exception. That exception should be modified.

The Sikorski amendment is a fair compromise. The Udall-Sharp bill as introduced prohibited all payments to attorneys from the Price-Anderson compensation fund, and the bill before us today allows compensation of attorneys before victims. The Sikorski amendment strikes a balance between these two proposals by providing that when victims have been compensated fully without reaching the $7 billion li-

ability cap, payment of attorneys' fees from the fund will be allowed. Otherwise it will not.

The Sikorski amendment provides equity to victims, is in line with standard insurance practice, and is a fair compromise. I urge the adoption of this amendment.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. MORRISON].

Mr. SCHAEFER. Mr. Chairman, will the gentleman yield?

Mr. MORRISON of Washington. I yield to the gentleman from Colorado.

Mr. SCHAEFER. I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to the amendment.

Although far too little attention has been paid to this fact, it is important to understand that this amendment prevents courts from compensating victims' attorneys in the event of a nuclear disaster.

The effect of doing so, depending on your interpretation of this amendment, is to either reduce victim compensation or severely jeopardize a victim's ability to retain counsel. Yet this is being billed as an amendment to protect victims. Take a second look.

The amendment before us states that the court may not authorize payment to a victim's attorney if such payment would jeopardize the victim's award. How does one define this vague term "jeopardize," which is the key word in the gentleman's amendment? Since even a legal fee of $1 would reduce, or jeopardize, the victim's payment, the court may determine that no legal fees are to be paid from Price-Anderson moneys. Try to get legal representation for nothing. It's not easy.

In the best case, although the amendment may prevent it, the victim may be able to retain counsel on a contingency basis. Without court supervision, however, the victim would be subject to unreasonable and duplicative legal fees. The victim could easily be charged far more than the actual value of the services provided.

In either case, the victim would be the loser—under an amendment supposedly designed to protect him. If you really want to assure victims full compensation for their injuries, vote against this amendment.

Mr. MORRISON of Washington. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, as a nonattorney, I rise in opposition to the Sikorski "legal cost" amendment.

This amendment would exclude from the Price-Anderson mechanism the costs of investigating, settling and defending claims. On the surface Mr. SIKORSKI's amendment appears to be simple lawyer-bashing—something most of us have done from time to time. The amendment appears to protect the public from ruthless attorneys. In reality it does nothing of the kind.

In the course of protecting us from lawyers, the amendment could hamper the rapid and efficient settlement of claims and leave the public with no protection at a time when it is most needed. This is because the definition of legal costs encompasses more than just attorneys' fees. Administrative costs include such things as medical evaluations, land appraisals, and establishing claims offices. These functions are essential for rapid, efficient, and effective compensation.

The rhetoric on this amendment has also created a misconception regarding existing Price-Anderson policy. Lawyers don't get paid first under Price-Anderson. In the event of an extraordinary nuclear accident, not only must the court approve a distribution plan, but the award of legal costs is prohibited until approved by the courts. This process worked most effectively and quickly under its only field test, at Three Mile Island.

The committee consensus bill already contains a fair and reasonable compromise on the "legal cost" issue. The bill subjects all costs in a major nuclear accident to rigorous court supervision to ensure that only reasonable and equitable costs are paid. In addition, the bill increases the financial protection available by 5 percent—about $350 million—to cover these costs.

I urge you to support this compromise which is included in the floor vehicle and to oppose this amendment that would exclude legal costs from Price-Anderson coverage.

Mr. SIKORSKI. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in support of the Sikorski amendment. I have been here in Congress now for six terms, for 11 years.

One of the things that I am absolutely convinced of, this is one of the most lawyer-hating institutions that has ever been put together on the face of the Earth.

Regardless of what bill is passed, what new regulation is sought to be imposed, it is always called the lawyers relief fund, another attempt at putting regulation on the books to help lawyers get more fees for themselves.

It is a lawyer-hating institution. There is no question about it.

I know it is proud to be a lawyer-hating institution. We have now the Sikorski amendment. The gentleman from Minnesota comes up with this radical idea.

In the event of a nuclear meltdown at a powerplant in this country, after the cap of $7 billion has been imposed, and an accident that might cost $20 or $30 billion, that is all we are going to let victims recover? Who could come in first and get their money, the lawyers or the victims, not just any lawyers but the lawyers defending the utilities?

That is what money, amongst others we are talking about which will come out of this $7 billion fund, while the bill as presently drafted lets lawyers go to the front of the line.

The amendment of the gentleman from Minnesota says victims are at the front of the line. They get compensated and then lawyers can come in and be compensated.

A lot of Members historically have felt it necessary to attack lawyers on the floor, and I understand that. We are going to be checking votes here today. Any Member who votes against the amendment of the gentleman from Minnesota will be permanently estopped from any further lawyer-bashing in that Member's congressional career.

The Members will not be allowed, because they are allowing them to put their hand in and perhaps take out $2 or $3 billion out of a small fund of $7 billion which could potentially go to victims in the event of a nuclear accident, so all of you legislative assistants out there who are now deciding how to recommend to your bosses how to vote this afternoon, here is how it comes down.

A vote for victims of nuclear accidents is a "yes." A vote for lawyers is a "no." Victims are a yes vote. Lawyers are a "no" vote.

If you want to break it down in any other manner, shape or form, you are misrepresenting what this issue is all about.

Lawyers should go to the back of a line. In the event of a nuclear disaster, they should be the ones who come into Congress and ask the Congress to appropriate another $10, $20, or $30 billion to compensate them, because they have not been properly paid.

I think that they have a better chance of getting that additional money beyond the $7 billion than the victims would when they come before us and ask us to fund that additional help and assistance which is going to have to go to those who have in fact suffered because of that damage.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I always enjoy following the gentleman from Massachusetts [Mr. MARKEY], my good friend, on these important issues.

I do not think anybody can argue about where the gentleman stands on these particular issues. I just hope the gentleman has the same success with this amendment that the gentleman had with the two previous ones in the committee.

Clearly this case is far more than lawyer-bashing, although perhaps I wish it were that simple. The real

simple fact is that the people that ought to be the most involved in this, and we ought to have the most concern about, are the potential victims in this kind of an accident.

Those people deserve full compensation, and nobody is arguing from any angle that they do not deserve full compensation.

That is why we went a tenfold increase in the limit on damages from $700 million to over $7 billion in this process, but everybody forgets about the victims.

It is very easy to bash the attorneys on this, and I would like to ask the gentleman from Texas who has practiced law like some of the Members, whether the gentleman would under the circumstances of the Sikorski amendment, if some victim came in and asked for his very eloquent efforts at representing him, whether the gentleman would consider representing a victim under this form of amendment that has been offered by the gentleman from Minnesota.

□ 1150

Mr. MARKEY. Mr. Chairman, would the gentleman from Ohio be willing to yield, since he mentioned my name?

Mr. OXLEY. Mr. Chairman, I yield to the gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Chairman, I certainly agree with the gentleman that they would have a very hard time getting an attorney, any type of attorney, on the plaintiff's side.

I think the gentleman is exactly right. I am not sure whether the gentleman from Massachusetts is for or against attorneys, but I think I am pretty sure I know where the gentleman stands on nuclear energy, and that is what it is all about.

Mr. OXLEY. Well, Mr. Chairman, I thank the gentleman for that response.

It seems to me that is what it is all about. The bill is carefully crafted to allow the Federal court to make a determination as to reasonable legal costs in this whole process. I think that is really what it is all about. The bill is fair. It deals fairly with victims. It deals fairly with attorneys.

Mr. Chairman, I think the Sikorski amendment should be defeated.

Mr. SIKORSKI. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Chairman, there is a fascinating little problem of credibility here, I think. What we are being asked to believe here today is that the primary protectors of the public interest and the consumer here are the nuclear industry, the insurance industry, and the legal profession. The reason they are opposing this amendment is in the public interest, the consumer's interest, and that is possible.

It is also possible that the National Consumers League who supports this amendment, and the National Insurance Consumers Organization, who supports this amendment, and the National Taxpayers Union who supports this amendment, are really against the consumer, are really against the individual citizen in this country. That is possible.

It is also possible that once the tortoise beat the hare, but that is not the way to bet.

It just seems that if you apply a little common sense, you know that the nuclear industry, the insurance industry and the legal profession, is defending itself, which it has every right to do, and that the National Consumers League, the National Insurance Consumers Organization and the National Taxpayers Union, are defending the consumer.

So the choice is very clear. No one is going to be misled by that. This is a vote that will say how each of our colleagues chooses. Are they going to be on the side of the industries or on the side of the consumer?

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. HUCKABY].

Mr. HUCKABY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the amendment pending before the House. Let us review the bidding here. We have a three tier process. There is $160 million in the first tier. Every plant is required to have that.

We have a $7 billion second tier as a collective pool. We voted yesterday to cap this at $7 billion that the utilities pay.

Nowhere in this bill does that say that the lawyers will be paid before the claimants. It says the court shall decide and the court shall decide what are reasonable attorneys' fees.

The point we are missing here in this debate is that there is a third tier of insurance provided.

Is there any doubt in anyone's mind here in Congress that in a major catastrophic accident, this bill says Congress shall come forth and provide compensation for the claims. Everyone will receive their just claims. It is just that this bill says all of the people, instead of those right players who happen to operate and live under a nuclear powerplant would pay those claims.

The bill specifies a third tier that shall kick in to pay the just and adequate claims of all victims. So that is really not an argument here.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. HUCKABY. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, do I understand the gentleman opposes the Sikorski amendment?

Mr. HUCKABY. Yes, I oppose it.

Mr. HALL of Texas. And favors the bill that was worked out after long hours and much give-and-take that the committee recommends?

Mr. HUCKABY. That is exactly correct.

Mr. SIKORSKI. Mr. Chairman, I yield one-half minute to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Chairman, we give the gentleman from Texas an assist on the previous play, but I cannot score the gentleman errorless on his previous comments.

The notion that this amendment, if adopted, would deter you from taking a case up for the plaintiff is simply flatly and inconvertibly wrong, because the plaintiff's attorney would have the right under the Sikorski amendment to get a contingency fee recovery out of the plaintiff's share, so in no way, shape or form, would the Sikorski amendment deter a plaintiff's lawyer from taking this on a contingency fee basis. The plaintiff would get his or her recovery and pay the lawyer his contingency fee.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Alabama [Mr. CALLAHAN].

Mr. CALLAHAN. Mr. Chairman, since under the Markey provision, since I am going to vote against the Sikorski amendment, I am going to be prohibited from bashing lawyers, I should like to start off before telling you that I am not going to be able to bash lawyers anymore because I am going to vote against the Sikorski amendment, but I will recall a conversation that took place on the floor of the Alabama Senate when a nonlawyer and a lawyer were in debate. The lawyer asked the nonlawyer if indeed he had a law degree. The nonlawyer said, "No, but if I had known how little sense it took to get one, I would have gone ahead and got one."

Mr. Chairman, I rise in opposition to the amendment.

I understand the concerns expressed by the gentleman from Minnesota. None of us would have attorneys receive payments to the detriment of the victims the Price-Anderson Act is designed to protect.

The bill before us allows payment of legal fees only if those fees are found to be reasonable by the courts and if the utilities had not attempted to delay claims settlements. If payments to victims for claims and authorized legal costs exceed the $7 billion limit, the utilities will be assessed an additional 5 percent to pay legal costs and claims.

Many of us have done our share of lawyer bashing. But I think we generally recognize that there is a need for legal work in many cases. I, for one, can't think of a more appropriate time for legal counsel than in the event of a

nuclear accident. The amendment doesn't only limit payment of utilities' legal costs, it also limits payment of victims' attorneys fees. Now, I'm not a lawyer myself, but I strongly suspect that many attorneys will be reluctant to accept plaintiffs' cases when their right to compensation is in question.

Mr. Chairman, I just don't think this Congress wants to limit victims' rights to retain adequate legal counsel. We can bash lawyers and large utilities all we want, but we will be making a great mistake if we bash victims with the same stick.

Furthermore, adequate legal defense of claims will serve to prevent frivolous claims and thus will preserve the resources of the compensation pool for legitimate claims.

This amendment is unnecessary and I urge my colleagues to reject it.

The CHAIRMAN pro tempore (Mr. HOYER). The Chair would advise the gentleman from Minnesota [Mr. SIKORSKI] has 5½ minutes remaining, and the gentleman from New York [Mr. LENT] has 2 minutes remaining.

Mr. SIKORSKI. Let me just say in a recap, Mr. Chairman, that thus far we have had three arguments made by the opponents, and one argument I want to make stronger for the proponents.

The first argument by the opponents is that we are going to collapse the system. They say that if this amendment goes on, the system is going to collapse. It cannot function.

I call it the Apocalypse Now prediction. They are not worried about a nuclear event. Of course, they say that nuclear event is not going to occur. They are not concerned about victims with irradiation burns and cancers and the rest of it not getting compensation because industry lawyers are there. What they say they are concerned about is the system collapsing if we pass the Sikorski amendment. But we do not change the system at all.

The second argument they make is that they are concerned about plaintiffs getting proper legal representation. Now they come on like Mother Theresa. They view the victims whom they have capped from recovery, whom they want to take money away from and out of the victims compensation fund to hire lawyers to beat those victims up, they now say they are concerned about the victims.

The plaintiffs and the victims support the Sikorski amendment.

The third argument is just the reverse. After being St. Bernards coming to the aid of the victims in the last argument, they now come in and beat up and bash the victims by saying that they are going to file frivolous suits and that it is going to be terrible and a run on the fund. They now become pit bulls. Dr. Jekyll becomes Mr. Hyde and they say the victims are at fault and the Sikorski amendment would assist the victims to a terrible degree and result in the ruination of the fund.

It is neither Apocalypse Now—the system won't collapse—nor Mother Theresa, nor Dr. Jekyll or Mr. Hyde. If they want people to believe them—and I have no doubt of the sterling sincerity on the opponents side—but if they truly want people to believe that they are on the side of the plaintiffs and the victims, they should find someone a little bit more gullible or naive, like Chicken Little, who ended up gobbled up by the fox.

Let me just conclude with one point in favor of the proponents that the opponents steer away from. Let me read from the National Taxpayers Union:

> It is not the nuclear industry that is at stake here. It is the federal treasury. Should there ever be an accident that causes a sizable amount of damage, the public stands a good chance of not being able to recoup their losses. . . Many members of Congress believe these people will be compensated—if they are, it will be by taxpayers—footing the bill for private industry's mistakes. . . This inequity is particularly glaring with regard to attorney's fees. We should eliminate provisions that would pay industry attorneys' fees before victims are fully compensated—so taxpayers don't wind up paying for the industry's legal costs.

If you are for the taxpayers, vote "yes" on Sikorski. If you are for the victims, vote "yes" on Sikorski. And if you are not for the taxpayers and victims, go ahead and vote "no."

Mr. LENT. Mr. Chairman, I yield the balance of my time to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. Mr. Chairman, I rise in opposition to the Sikorski amendment.

What we are considering today, Price-Anderson, is one of the most complicated pieces of legislation that this 100th Congress will consider.

The proponents of this amendment would like everyone to believe that this is a simple amendment, who gets paid first, attorneys, or the victims of a nuclear accident?

But you know, we just heard a great deal of emotionalism. We heard people talking about Dr. Jekyll, St. Bernard, Apocalypse Now, Mother Theresa, and I think it is important to say that there is a great deal of emotion that is always expressed on anything regarding the nuclear industry. Many of the people who express that emotion really want to see the nuclear industry disbanded.

Price-Anderson was enacted with two major objectives: to limit the liability of a fledgling commercial nuclear industry and to assure speedy and just compensation to victims in the event of a nuclear accident.

Compensation of victims is assured through a no-fault liability system. Under the system, all utilities with nuclear reactors would be required to contribute up to $63 million per reactor, per incident into the public compensation fund. The no-fault system and the public compensation fund—which would total $7 billion under H.R. 1414—ensure that victims will get speedy compensation. Without Price-Anderson, victims' claims would languish in court for years. Furthermore, there wouldn't be enough money to pay court awards since a single utility would almost certainly be bankrupted by a major nuclear accident.

If the Sikorski amendment passes and legal costs may not be paid from the compensation fund, the whole system to guarantee compensation to victims begins to fall apart.

The Sikorski amendment severely damages the Price-Anderson system. If the goal of the Sikorski amendment is to protect the victims' compensation fund from being drained by lawyers' fees, the bill before us already does that. H.R. 1414 contains strong provisions to protect against unreasonable lawyers' fees. The legal costs of both plaintiffs and defendants require court approval. Judges can throw out legal costs which are not reasonable or are duplicative or frivilous. So, the courts can already prevent legal fees from draining the compensation fund. We do not need the Sikorski to protect the victims' compensation fund.

I wish the Sikorski amendment were unnecessary, but harmless. But, it's not. The Sikorski amendment actually hurts the very victims he seeks to protect.

Under the Sikorski amendment, victims' attorneys would be excluded from receiving payment from the fund. So, victims who may not have the financial resources to hire an attorney to defend their claims would be left to fend for themselves.

Second, compensation for the real victims of a nuclear accident would be threatened by the Sikorski amendment. The Sikorski amendment prohibits not only defense and plaintiffs' lawyers' fees; the Sikorski amendment prohibits payment from the fund for the costs an insurance company incurs in investigating claims. Insurance companies only administer the disbursement of money from the second-tier victims' compensation fund; their own funds are not at stake. Insurance companies will not investigate claims for which their expenses cannot be reimbursed. Consequently, frivolous claims are likely to be approved, draining the compensation fund at the expense of actual victims. The victims' compensation fund is better protected by spending a fraction of a dollar weeding out spurious claims than risking the unlimited diversion of funds away from true victims.

Furthermore, without certain payment of investigatory, defense and settlement costs, many insurance companies would withdraw altogether from administering the distribution of

funds. Again, victims would suffer since the prompt payment of claims would be disrupted.

Finally, the ranking minority member of the Energy and Power Subcommittee, Mr. MOORHEAD, offered a compromise amendment in subcommittee specifically to address the concern that legal costs might divert funds from victims. The Moorhead amendment provides that retroactive assessments on nuclear utilities would increase by 5 percent if it appears likely that the $7 billion cap will be exceeded.

Strict court supervision of legal costs combined with a potential 5-percent increase in utility assessments ensure that the fund is primarily a compensation fund, not a legal cost fund.

The Sikorski amendment may sound good, but if you want to be sure that the real victims of a nuclear accident are compensated, look beyond the superficial rhetoric.

I urge my colleagues to oppose the Sikorski amendment.

Mr. SIKORSKI. Mr. Chairman, I yield my remaining 3 minutes to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART. Mr. Chairman, I thank my colleagues and I commend my friend, the gentleman from Minnesota, for offering this amendment.

You know, this isn't Burger King, you cannot have it both ways. Yesterday my colleagues said that it is an "unlikely event" that the accident would exceed the $7 billion cap but today we are told that this amendment poses a grave threat to Price-Anderson but its implementation is likely.

□ 1205

The fact of the matter is you cannot have it both ways. It cannot be unlikely yesterday and absolutely certain today. The fact is, that the Sikorski amendment only applies in the event that the cap is breached and then only under those circumstances as determined by a judge in his discretion as to whether or not the fees are reasonable and the action pursued is frivolous or dilatory.

Let us talk about the insurance companies and the huge pall of concern we have expressed so deeply today on their behalf. They collect annually without anything ever occurring, $50 million in fees. Nothing happens. They collect that $50 million every year for 3 years and reach $150 million which is $10 million short of their total liability for the entire Price-Anderson of $160 million.

Are my colleagues telling me now that insurance companies cannot afford the costs of handling payments to victims?

Let us focus on this for a minute. What we have in Price-Anderson is the most advanced form of corporate socialism known to mankind. We guarantee that the utilities are protected.

Oh, yes; we guarantee that the suppliers are protected and will never be brought into court even if they grossly negligently cause injury or death to someone and now while we are providing that statutory defense we say that the lawyers who defend them, those who cause the injury, are guaranteed to get paid first in that unlikely event of an accident.

Come on, folks we cannot have it both ways. I can assure this House that if we are concerned about the lawyers, that we are prepared to consider a Homeless Act that will take care of those few lawyers who may find themselves economically deprived as a result of the passage of the Sikorski amendment, but that is not likely the case.

Lest we be concerned we are talking small potatoes here in excess of the cap, fully appreciate the example of Three Mile Island in which between 16 and 18 percent of the payments made went to attorney's fees, attorneys who fought the victims' claims.

I continue to be amazed at those folks who advance product liability legislation, which contains a cap on attorneys' fees, a piece of legislation that I have some interest in, because it is necessary to do this to solve the liability crisis. But today they want to have it both ways: limit attorneys' fees for victims of faulty products but throw dollars to the lawyers when there is a nuclear accident.

Come on, folks, we cannot have it both ways. We cannot say fix the victims in product liability by limiting attorneys' fees and protect victims by taking their lawyers away from them. Support victims, support the Sikorski amendment.

Mr. MURPHY. Mr. Chairman, I was part of the beginning of the solution to this difficult issue back when the Interior Committee addressed Price-Anderson. I think it is important for my colleagues to know that all sides have worked hard to find a workable solution to this issue. No one is served by coming in at the 11th hour and disrupting the true compromise reached in this bill.

The solution that was reached was in favor of judicial supervision of both plaintiffs' and defendants' legal costs in order to maximize the compensation of victims from the first two tiers of Price-Anderson insurance proceeds.

Under H.R. 2994, the only legal costs paid are those that meet the following standards:

First, the costs are reasonable and equitable; and

Second, the person seeking reimbursement has: litigated in good faith; avoided unnecessary duplication of efforts with those of other parties similarly situated; not made frivolous claims or defenses; and not attempted to unreasonably delay the prompt settlement or adjudication of claims.

It is arbitrary to exclude, as the Sikorski amendment does, plaintiffs' or defendants' costs that are inevitable under our American tort system and that have met these tests.

Additionally, the Sikorski amendment is unnecessary to assure victim compensation since it is based on the false premise that these is an absolute limit on compensation funds. In the unlikely event the liability limit is reached, H.R. 2994 commits Congress to provide full compensation. Congress will be presented with a plan to provide additional compensation, and has reserved the right to tax licensees to reimburse the Treasury. Thus, coverage of legal costs will not impart the full compensation of victims.

However, the Sikorski amendment does impair the right to counsel. The legal costs that the amendment restricts are both plaintiffs' and defendants' costs approved by a court as reasonable under the criteria I have outlined.

Perhaps the most glaring deficiency in the Sikorski amendment is that it will render the Price-Anderson Act unworkable for the public. Questions will be raised as to why there is all of this money out there that victims can not get because there is no one to write the checks. The unclear liability insurers cannot continue to administer either of the two layers of liability insurance under the Sikorski amendment, and neither could any other private entity. The law must provide for the costs of administering the system.

In the one example of Price-Anderson after Three Mile Island, the insurance system worked. Within 72 hours after the accident the industry established claims facilities for evacuated families. Under this amendment, the expenses of assisting people quickly and efficiently would have been denied. The position in H.R. 2994, with a surcharge for these expenses on top of the retrospective premium assessment, represents a carefully crafted compromise by the authorizing committees.

This amendment wants to provide the public with the Cadillac of compensation systems, with $7 billion in the gas tank and the motor running, but with no transmission to get the power to the wheels. Thanks, but no thanks. I urge my colleagues to oppose the Sikorski amendment and thereby provide the public with a compensation system that will work if it is called upon.

The CHAIRMAN pro tempore (Mr. HOYER). The question is on the amendment offered by the gentleman from Minnesota [Mr. SIKORSKI].

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. LENT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 230, not voting 20, as follows:

[Roll No. 292]

AYES—183

Ackerman	Bates	Boggs
Akaka	Beilenson	Boland
Alexander	Bennett	Bonior (MI)
Anderson	Berman	Bonker
Aspin	Biaggi	Borski
Atkins	Bilbray	Bosco
AuCoin	Boehlert	Boucher

Boxer
Brennan
Bryant
Campbell
Cardin
Carper
Clay
Clinger
Coelho
Collins
Coughlin
Coyne
Crockett
Davis (IL)
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Early
Eckart
Edwards (CA)
Evans
Fascell
Fazio
Feighan
Flake
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Garcia
Gekas
Glickman
Gray (IL)
Gray (PA)
Guarini
Gunderson
Hamilton
Hastert
Hayes (IL)
Hefley
Hertel
Hochbrueckner
Hoyer
Hughes
Hutto
Jacobs
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kildee
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Lowry (WA)
Luken, Thomas
Lukens, Donald
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McEwen
McHugh
McMillen (MD)
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Moody
Mrazek
Nelson
Nowak
Oakar
Oberstar
Obey
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Penny
Petri
Porter
Price (NC)
Rahall
Rangel
Ravenel
Richardson
Rodino
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Scheuer
Schneider
Schroeder
Schumer
Sikorski
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith, Robert (NH)
Snowe
Solarz
St Germain
Staggers
Stark
Stokes
Studds
Swift
Synar
Tauke
Torricelli
Towns
Traficant
Upton
Vento
Visclosky
Volkmer
Walker
Watkins
Waxman
Weber
Weiss
Wheat
Williams
Wise
Wolpe
Wyden
Yates
Yatron

NOES—230

Andrews
Annunzio
Applegate
Archer
Armey
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilirakis
Bliley
Boulter
Brooks
Broomfield
Brown (CO)
Bruce
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Coats
Coble
Coleman (MO)
Coleman (TX)
Combest
Conte
Conyers
Cooper
Courter
Craig
Crane
Dannemeyer
Darden
Daub
Davis (MI)
de la Garza
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dowdy
Dreier
Duncan
Dyson
Edwards (OK)
Emerson
English
Erdreich
Espy
Fawell
Fields
Fish
Flippo
Frenzel
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gibbons
Gilman
Gingrich
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Green
Gregg
Hall (OH)
Hall (TX)
Hansen
Harris
Hatcher
Hayes (LA)
Hefner
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Howard
Huckaby
Hunter
Inhofe
Ireland
Jeffords
Jenkins
Jones (TN)
Kasich
Kleczka
Kolbe
Kolter
Konnyu
Kyl
Lagomarsino
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCandless
McCollum
McCurdy
McDade
McGrath
McMillan (NC)
Mica
Michel
Miller (OH)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison (WA)
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nichols
Nielson
Olin
Ortiz
Oxley
Packard
Parris
Pashayan
Pepper
Perkins
Pickett
Pickle
Price (IL)
Pursell
Quillen
Ray
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Saxton
Schaefer
Schuette
Schulze
Sensenbrenner
Sharp
Shaw
Shumway
Shuster
Sisisky
Skeen
Skelton
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (OR)
Solomon
Spence
Spratt
Stallings
Stangeland
Stenholm
Stratton
Stump
Sundquist
Sweeney
Swindall
Tallon
Taylor
Thomas (CA)
Thomas (GA)
Traxler
Udall
Valentine
Vander Jagt
Vucanovich
Walgren
Weldon
Whittaker
Whitten
Wilson
Wolf
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—20

Anthony
Boner (TN)
Brown (CA)
Daniel
Dymally
Gephardt
Hammerschmidt
Hawkins
Hubbard
Hyde
Johnson (CT)
Kemp
Kennelly
Latta
Lott
Morrison (CT)
Roemer
Rowland (CT)
Tauzin
Torres

□ 1220

Mr. EDWARDS of Oklahoma and Mr. BOULTER changed their votes from "aye" to "no."

Messrs. CLINGER, DONALD E. LUKENS, HUGHES, GEKAS, and Mrs. BOGGS changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. WALGREN

Mr. WALGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALGREN: Page 9, line 4, strike "(2) In" and insert "(2)(A) Except as provided in subparagraph (B), in".

Page 9, after line 14, add the following new subparagraph:

"(B)(i) The Secretary shall require as a condition of any agreement of indemnification entered into with a contractor under paragraph (1) covering public liability arising from nuclear waste transportation activities funded by the Nuclear Waste Fund established under section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222), that the contractor obtain the maximum amount of financial protection that the Secretary determines to be reasonably available.

"(ii) The amount of indemnity provided contractors under paragraph (1) shall not be effected by any amount of financial protection required under this subparagraph.

"(iii) The aggregate public liability under subsection e. (1)(B) for contractors described in this paragraph shall be increased by any amount of financial protection required under this subparagraph.

"(iv) The Secretary may, in accordance with clause (v), reduce the amount of financial protection required of any contractor under clause (i) by an amount equal to the amount of financial protection covering public liability described in clause (i) that such contractor is required to obtain under section 10927 of title 49, United States Code, or any other Federal law.

"(v) The Secretary may not reduce any amount of financial protection under clause (iv) for any contractor unless—

"(I) such contractor submits to the Secretary proof of financial protection obtained under section 10927 of title 49, United States Code, or any other Federal law; and

"(II) the Secretary determines that such financial protection is adequate to offset financial protection that would otherwise be required of such contractor under clause (i).

"(vi) Notwithstanding any other law, any amount paid by a contractor under clause (i) for financial protection required under such clause shall be considered a reimbursable cost of performing a contractual activity described in such clause.".

Page 14, line 10, insert "except as provided in subsection d. (2)(B)(iii)," before "in the case of".

Page 33, after line 7, insert the following new section (and redesignate the succeeding section accordingly):

SEC. 16. FINANCIAL ACCOUNTABILITY.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as amended by this Act, is further amended by adding at the end the following new subsection:

"u. FINANCIAL ACCOUNTABILITY.—The Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor of such contractor) conducting nuclear waste transportation activities funded by the Nuclear Waste Fund established under section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222), an amount up to the lesser of, 3 times the amount of profit obtained under such contract, or 10 percent of the net worth of the entity performing such activities, for public liability resulting, in whole or part, from the bad faith, willful misconduct, or gross negligence of any corporate officer, manager, or supervisor of such contractor (or subcontractor of such contractor).".

Mr. WALGREN [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN pro tempore. Under the unanimous-consent agreement, the gentleman from Pennsylvania [Mr. WALGREN] will be recognized for 10 minutes and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. WALGREN].

Mr. WALGREN. Mr. Chairman, I yield myself such time as I may consume.

At the outset, on this amendment I want to give credit particularly to the gentleman from Missouri [Mr. BUECHNER] who has joined me in working on this proposal. He certainly deserves credit for much of the support that this amendment has to this point.

Mr. Chairman, this amendment takes its theme from the old song about the railroad that "runs through the middle of the house." It essentially says that when it comes to transporting nuclear waste "through the middle of the house" that railroads and trucking firms ought to have some financial stake in not having an accident and it ought to be carrying some private sector insurance.

Now both Mr. BUECHNER and I represent districts where nuclear waste from Three Mile Island has been brought through on the railroad.

Safe transportation of nuclear waste will soon be the direct concern of congressional districts in almost every State as we begin to move waste that is now held at reactors to interim or permanent repositories.

The Department of Energy estimates that more than 100,000 tons of nuclear waste will be shipped by the year 2020. And as we in Pittsburgh found out when the Three Mile Island debris was transported by rail through our community, we should make no mistake about it, it runs literally through the middle of the house.

Now under the present legislation, any DOE contractor is guaranteed blanket indemnity for any liability arising out of an accident involving nuclear materials. That means all those firms transporting nuclear waste, in many instances less than 20 yards from the bedrooms we sleep in, have essentially no stake in whether they have an accident.

Now in fairness, this bill was not focused on transportation and there are substantial and good arguments for limiting liability or providing indemnity for many aspects of the nuclear power industry, particularly those involved in government contracting. But regardless of how we view the liability questions for construction of facilities or for operation of facilities, transportation of nuclear materials is clearly a different matter; I think one that was largely not considered in the total large-scale frame work of this act that is focused on Price-Anderson liability of Government contractors in operating facilities and the like.

Common sense requires us not to give up the increased degree of care in transportation of nuclear materials that comes with some degree of private responsibility. Blanket indemnification, although appropriate for some other aspects of nuclear power and nuclear operations, is simply inappropriate for the transporters of nuclear waste.

Now, in honesty we should not overstate the impact of what this amendment would require. The amendment would create a limited amount of liability. The Justice Department would have the option to seek recovery of indemnification money in an amount up to three times the profits of the contract, or 10 percent of the contractor's net worth and, underlined, whichever is less.

□ 1235

Now, civil liability would exist only in those cases where damages were caused by willful misconduct, bad faith, or gross negligence. That kind of limited liability could not as a practical matter be considered a threat to any responsible private sector operation, but it does represent the kind of financial interest in safe operation that would be in the back of the minds of those involved in the actual transport of dangerous materials, and that would serve the public interest well.

In addition, the amendment would require those transporting dangerous nuclear materials to carry liability insurance in an amount designated by the Secretary of the Department of Energy as reasonable under the circumstances.

We all know that Government bureaucracy often fails miserably in safety regulation, and it only makes sense, therefore, to involve the additional interest in safe operation that private sector insurance carries would provide. Certainly the public would expect nothing less under the circumstances.

This amendment was approved by the Committee on Energy and Commerce, but since that time we have redrafted some of the provisions to attempt to address concerns that were raised by the railroads with respect to cost reimbursement since the Government is essentially paying these contracts under DOE and with respect to double insurance coverage and eliminating that possibility as being required that was raised by some of the trucking concerns.

Mr. Chairman, this is a reasonable effort to insure the greatest degree of care and safety in the transport of nuclear waste, and I urge all my colleagues to support the amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. MURTHA). The Chair will inquire, does the gentleman from New York [Mr. LENT] rise in opposition to the amendment?

Mr. LENT. I do, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman from New York [Mr. LENT] is recognized for 10 minutes in opposition to the amendment.

Mr. LENT. Mr. Chairman, I am pleased to yield 1 minute to the distinguished chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. HOWARD].

Mr. HOWARD. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I would just like to point out that this amendment comes under the purview of the Committee on Public Works and Transportation, and our committee was not notified of this amendment. We have held no hearings on this amendment in our committee, and I think it would be unwise to pass legislation dealing with transportation via trucks without the proper committee of authorization and jurisdiction having held hearings and having made some determination on it.

So, Mr. Chairman, I hope that we will not agree to this amendment at this time.

Mr. WALGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. BUECHNER].

Mr. BUECHNER. Mr. Chairman, I am pleased to cosponsor the amendment offered by the gentleman from Pennsylvania. The issue of transportation of radioactive waste is something that Members of this body must address! I can assure my colleagues that until a permanent repository is built, much of this country's nuclear waste will be transported by rail, motor carrier, barge, and any other available means. Safe transportation of nuclear waste should be a direct concern of congressional districts in almost every State of the country.

Mr. WALGREN and I are particularly concerned with the high-level radioactive waste from the Three Mile Island reactor. This waste is being transported to a government research facility in Idaho. Alarmingly, this material is being transported through such highly populated areas as St. Louis and Pittsburgh. Neither the Department of Energy nor the Department of Transportation should be routing radioactive waste through such densely populated areas as the route of first choice. The chance of an accident is a very real and frightening possibility.

Safeguards must be implemented to ensure that the public is protected from radioactive waste. Unfortunately, safeguards do not exist in the bill at hand. The purpose of our amendment is to instill some common sense into this legislation. Our amendment will go a long way toward ensuring that the transporters of radioactive waste ship such material in a safe appropriate manner.

As the legislation is presently written, the DOE's nuclear waste transporters are totally exempt from any li-

ability for damages to the public. These contractors are not required to purchase nuclear liability insurance. What would happen if the nuclear waste is spilled along the way? What would happen if it spilled in the middle of Pittsburgh? or St. Louis? or Kansas City? Scores of lives would be jeopardized. Billions of dollars worth of damages could be inflicted upon land and property! And what recourse would we have? Under current law, even if the transporting company caused the accident due to their own negligence, no matter how gross or willful, nothing could be done. This is unacceptable. Blanket indemnification is inappropriate for the transporters of nuclear waste. Blanket indemnification is an invitation to carelessness in an area where the highest standard should be the norm.

Our amendment would require transporters of nuclear materials to carry liability insurance and would also make these contractors liable for their own actions. It would permit the Department of Energy to recover any damages paid on behalf of a nuclear waste transporter if an accident is caused by the contractors willful misconduct, bad faith, or gross negligence. I believe that the present system of indemnification removes the safety incentive created by the tort system. To the extent liability can be passed to the Government, neither the contractors nor the insurers have an interest in ensuring that waste is transported with the safety of the public in mind.

Mr. Chairman, the St. Louis Post-Dispatch recently wrote a very telling comment on the nuclear power industry—

> With commercial nuclear power now entering its forth decade, it is time for Congress to break the umbilical cord that has nourished the nuclear industry thus far. The industry should be able to sustain itself without the expensive and counterproductive coddling of the existing Price-Anderson Act.

I agree! It is time for the contractors to be accountable for their actions and to ensure the safety of the public when transporting radioactive waste.

I urge my colleagues to support this public safety amendment. The time is now to act. It is imperative that Congress carry out the mandate of the people and stop courting disaster.

The CHAIRMAN pro tempore. The Chair wishes to state that the gentleman from Pennsylvania [Mr. WALGREN] has 1 minute remaining.

Mr. WALGREN. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I simply want to get a quick explanation. Suppose there would be no insurance coverage available and it is not even in the market. What happens then with respect to the contractor's liability under the gentleman's amendment?

Mr. WALGREN. Mr. Chairman, if the gentleman will yield, under the amendment the Secretary of the Department of Energy would set the amount of insurance required as reasonable under the circumstances. If none is available, there would be no requirement.

Mr. GEKAS. Mr. Chairman, I thank the gentleman.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. Mr. Chairman, this is not the place for this amendment, as the chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. HOWARD], pointed out. This is a public compensation act, not a transportation act.

But getting to the merits of the case, this material would be transported in dry casks. They are very secure, under DOT rules. But what this well-intentioned amendment runs into is the law of unintended consequences. The railroads as ICC carriers have to carry it, there is no question about it, but they can set any rate. They can make the rate so unattractive that what is going to happen is that we will get all kinds of truckers, and a gypsy trucker will say, "I'm not concerned about liability. I don't have anything for them to sue anyway, so I'm going ahead and bid it and get a chance to make some money," and you are going to have this hauled over all the roads that way.

I say to the proponents of this amendment that the place to handle it is in the Surface Subcommittee or in the Transportation Committee and with a dedicated train, a dedicated train that goes from where you pick it up to where you drop it. Under the railroad's rules, on the dedicated trains, you have to clear the tracks so far in advance and clear the tracks so far behind.

Mr. Chairman, that is the place to handle it, not here with this amendment at this time on this bill. I urge a no vote on the amendment.

Mr. WALGREN. Mr. Chairman, I yield the balance of my time to the chairman of the Subcommittee on Energy and Power, the gentleman from Indiana [Mr. SHARP].

Mr. SHARP. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I just want to remind my colleagues that the Energy and Commerce Committee did adopt this amendment. We are going to have to piece together a solution to our nuclear waste problem, whether you are for or against nuclear power, and one piece of that is helping to assure the safe transportation, because there will have to be transportation of this fuel.

So, Mr. Chairman, I think we ought to support the Walgren amendment today.

Mrs. LLOYD. Mr. Chairman, I reluctantly rise in opposition to this amendment.

As the gentleman knows, I respect the gentleman's judgment and I value his work on the Committee on Science, Space, and Technology. However, I have concluded that this amendment is unfair to some waste transporters, will not achieve what the gentleman intends and will increase the costs of the Nuclear Waste Program to the detriment of virtually every utility ratepayer.

A key part in the transportation process is the DOE contractor who delivers the waste to the carrier for shipment. The DOE contractor must use an NRC licensed cask and use NRC and DOT approved routes.

Transportation of nuclear waste, when it occurs, will be the most regulated segment of activities in any aspect of DOE's work, waste or nonwaste. The transportation industry is already heavily regulated and DOE will add another layer of oversight to those already existing. For example, approval of cask and routing must come from the Nuclear Regulatory Commission; the certificate of carrier must come from DOT; and in some cases, States and Indian tribes will have oversight of waste shipments through their jurisdiction; and finally the shipments will be subject to direct firsthand scrutiny of the press and the general public.

This amendment would also be unfair to the railroads. Essentially, as a common carrier, a railroad must accept the waste for shipment, so they are not voluntarily involved in the waste transportation business. The railroads are large entities with sizable assets to satisfy the judgments rendered against them. Thus, they are normally self-insured against damages, including damages resulting from hazardous waste.

Railroads do everything in their power to avoid accidents, and greater liability and expense will give them no greater incentive.

For truck transporters, this amendment will also not achieve the desired enhancement of safety. All waste transporters are intensely regulated by the Department of Transportation and the Nuclear Regulatory Commission and are subject to fines and imprisonment for violations of their regulations. Additionally, the expense for any new insurance they are required to purchase will only be passed on to the shipper as an additional cost of doing business.

Finally, subrogation of any payments under Price-Anderson will subvert the purposes of Price-Anderson for prompt payment of public damages, and the promotion of participation in nuclear commerce by large, responsible corporations.

If the transporters of the waste must worry about being held liable for the damages resulting from an accident, they will seek to be independently represented by legal counsel in any claims for damages which will create an adversarial, rather than cooperative, relationship between them and the Department of Energy. This is likely to slow the administration of claims under the act.

If the large truck transportation companies get out of the business because of this contingent liability, what will be left is smaller companies with fewer assets to risk, and less incentive to avoid cutting corners on safety. This result would also achieve the opposite of what the gentleman intends.

For these reasons, Mr. Chairman, I must oppose the gentleman's amendment.

The CHAIRMAN pro tempore (Mr. MURTHA). The question is on the amendment offered by the gentleman from Pennsylvania [Mr. WALGREN].

The question was taken; and the Chairman pro tempore being in doubt, the Committee divided, and there were—ayes 4, noes 13.

Mr. WALGREN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that the remaining portions of the bill be printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The text of the remainder of the bill is as follows:

SEC. 3. INDEMNIFICATION AGREEMENTS FOR LICENSEES OF NUCLEAR REGULATORY COMMISSION.

Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 1997".

SEC. 4. INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDERTAKEN UNDER CONTRACT WITH DEPARTMENT OF ENERGY.

(a) IN GENERAL.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended to read as follows:

"d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the 'Secretary') may have, the Secretary shall, until August 1, 1999, enter into agreements of indemnification with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

"(B)(i)(I) Agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification under this section for activities described in such subparagraph.

"(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

"(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b. (except as provided in subsection e. (3)(B)) and subject to the limitations in section 302(e)(2) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

"(iii) Public liability subject to an agreement of indemnification under subparagraph (A) that arises out of activities not specified in clause (ii) shall be compensated in accordance with the provisions of this Act and, to the extent approved in appropriation Acts, from the general revenues of the Treasury.

"(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

"(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection b. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

"(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

"(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1987, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.

"(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

"(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

"(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.".

(b) DEFINITIONS.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended by adding at the end the following new subsections:

"dd. The terms 'high-level radioactive waste' and 'spent nuclear fuel' have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

"ee. The term 'transuranic waste' means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

"ff. The term 'nuclear waste activities', as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).".

SEC. 5. PRECAUTIONARY EVACUATIONS.

(a) COSTS INCURRED BY STATE GOVERNMENTS.—Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by inserting after "nuclear incident" the first place it appears the following: "or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)".

(b) DEFINITION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"gg. The term 'precautionary evacuation' means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

"(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

"(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.".

(c) LIMITATION.—Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210)

is amended by adding at the end the following new subsection:

"q. LIMITATION ON AWARDING OF PRECAUTIONARY EVACUATION COSTS.—No court may award costs of a precautionary evacuation unless such costs constitute a public liability.".

SEC. 6. AGGREGATE PUBLIC LIABILITY FOR SINGLE NUCLEAR INCIDENT.

Section 170 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)) is amended to read as follows:

"e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

"(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o. (1)(E));

"(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the maximum amount of financial protection required under subsection b. or the amount of indemnity and financial protection that may be required under paragraph (3) of subsection d., whichever amount is more; and

"(C) in the case of all other licensees of the Commission required to maintain financial protection under this section—

"(i) $500,000,000, together with the amount of financial protection required of the licensee; or

"(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

"(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with subsection i., and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

"(3)(A) The limitation on aggregate public liability established under paragraph (1)(B) shall not apply to any nuclear incident arising from nuclear waste activities if—

"(i) a court, acting pursuant to subsection o., determines that public liability from such nuclear incident is likely to exceed the amount of aggregate public liability under subparagraph (B) of paragraph (1); and

"(ii) the Congress does not act to provide for the full and prompt compensation to the public for such public liability resulting from such nuclear incident within 1 year of the submission by the President to the Congress of a compensation plan under subsection i. (2)(C).

"(B) Public liability arising under subparagraph (A) shall be compensated in accordance with the provisions of this Act as follows:

"(i) Public liability arising from nuclear waste activities funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund. If sufficient amounts are not available in the Nuclear Waste Fund to expeditiously compensate such claims, the Secretary shall exercise the authority provided in subsections (a)(4) and (e)(5) of section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222 (a)(4) and (e)(5)).

"(ii) Public liability arising from any activity subject to an agreement of indemnification under subsection d., not described in clause (i) shall be compensated from the general revenues of the Treasury.

"(4) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

"(5) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.".

SEC. 7. COMPENSATION PLANS.

(a) IN GENERAL.—Section 170 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(i)) is amended to read as follows:

"i. COMPENSATION PLANS.—(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), the Secretary or the Commission, as appropriate, shall—

"(A) make a survey of the causes and extent of damage; and

"(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

"(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1) the President shall submit to the Congress—

"(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection e. (1);

"(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

"(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

"(D) any additional legislative authorities necessary to implement such compensation plan or plans.".

(b) CONFORMING AMENDMENT.—Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)) is amended—

(1) in the matter preceding paragraph (1), by striking "subsection 170 e.:" and inserting "the applicable limit of liability under subparagraph (A), (B), or (C) of subsection e. (1):"; and

(2) by striking paragraph (4).

SEC. 8. DATE OF EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT.

Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended—

(1) by striking "August 1, 1987" each place it appears and inserting "August 1, 1997"; and

(2) by striking "excluding cost of investigating and settling claims and defending suits for damage;" in paragraph (1) and inserting "including such legal costs of the licensee as are approved by the Commission;".

SEC. 9. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by striking subsection l. and inserting the following:

"l. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.—(1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1987, the President shall establish a commission (in this subsection referred to as the 'study commission') in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1).

"(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

"(i) shall be appointed by the President; and

"(ii) shall be representative of a broad range of views and interests.

"(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

"(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

"(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

"(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

"(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

"(B) recommendations for any standards or procedures that are necessary to estab-

lish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

"(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

"(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

"(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

"(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

"(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

"(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

"(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1987.

"(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.".

SEC. 10. WAIVER OF DEFENSES.

(a) STATUTE OF LIMITATIONS.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in clause (iii) of the first sentence by striking the following: ", but in no event more than twenty years after the date of the nuclear incident".

(b) APPLICABILITY.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended—

(1) by redesignating subparagraphs (a), (b), and (c) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "or" at the end of subparagraphs (A) and (B); and

(3) by inserting after subparagraph (C) the following new subparagraphs:

"(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

"(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

"(F) arises out of, results from, or occurs in the course of nuclear waste activities.".

SEC. 11. JUDICIAL REVIEW OF CLAIMS ARISING OUT OF A NUCLEAR INCIDENT.

(a) CONSOLIDATION OF CLAIMS.—Section 170 n. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(2)) is amended—

(1) in the first sentence—

(A) by striking "an extraordinary nuclear occurrence" each place it appears and inserting "a nuclear incident"; and

(B) by striking "the extraordinary nuclear occurrence" each place it appears and inserting "the nuclear incident";

(2) in the second sentence, by inserting after "court" the first place it appears the following: "(including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1987)"; and

(3) by adding at the end the following new sentence: "In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1987, whichever occurs later.".

(b) DEFINITION OF PUBLIC LIABILITY ACTION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"hh. The term 'public liability action', as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.".

(c) SPECIAL CASELOAD MANAGEMENT PANEL.—Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended by adding at the end the following new paragraph:

"(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the 'management panel') to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

"(i) a court, acting pursuant to subsection o., determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

"(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of tme court.

"(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

"(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

"(C) It shall be the function of each management panel—

"(i) to consolidate related or similar claims for hearing or trial;

"(ii) to establish priorities for the handling of different classes of cases;

"(iii) to assign cases to a particular judge or special master;

"(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

"(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

"(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

"(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.".

(d) LEGAL COSTS.—

(1) PAYMENT CRITERIA.—Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)), as previously amended by this Act, is further amended by—

(A) inserting after the subsection designation the following: "PLAN FOR DISTRIBUTION OF FUNDS.—(1)";

(B) redesignating paragraphs (1) through (3) as subparagraphs (A) through (C); and

(C) adding at the end the following:

"(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

"(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b. (1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

"(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

"(A) submitted to the court the amount of such payment requested; and

"(B) demonstrated to the court—

"(i) that such costs are reasonable and equitable; and

"(ii) that such person has—

"(I) litigated in good faith;

"(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

"(III) not made frivolous claims or defenses; and

"(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.".

(2) DEFINITION OF LEGAL COSTS.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"jj. LEGAL COSTS.—As used in section 170, the term 'legal costs' means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.".

SEC. 12. REPORTS TO CONGRESS4BY NUCLEAR REGULATORY COMMISSION AND DEPARTMENT OF ENERGY.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking "shall submit to the Congress by August 1, 1983, a detailed report", and inserting the following: "and the Secretary shall submit to the Congress by August 1, 1993, detailed reports"; and

(3) by adding at the end the following new paragraphs:

"(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.

"(3) Not later than February 1, 1988, the Secretary shall submit a report to the Congress identifying and explaining the criminal and civil liabilities of all Department of Energy contractors and other persons indemnified who intentionally cause or attempt to cause a nuclear accident at a Department of Energy facility. The Secretary shall include in such report such recommendations as the Secretary determines to be appropriate for punishing such misconduct, enacting new provisions of law, or clarifying law in effect on August 1, 1987.".

SEC. 13. LIABILITY OF LESSORS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"r. LIMITATION ON LIABILITY OF LESSORS.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.".

SEC. 14. PUNITIVE DAMAGES.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"s. LIMITATION ON PUNITIVE DAMAGES.—No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.".

SEC. 15. INFLATION ADJUSTMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b. (1) not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1987, in accordance with the aggregate percentage change in the Consumer Price Index since—

"(A) such date of enactment, in the case of the first adjustment under this subsection; or

"(B) the previous adjustment under this subsection.

"(2) For purposes of this subsection, the term 'Consumer Price Index' means the Consumer Price Index for all urban consumers published by the Secretary of Labor.".

SEC. 16. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REFERENCES TO NUCLEAR REGULATORY COMMISSION.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "Commission" each place it appears and inserting "Nuclear Regulatory Commission".

(2) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended by striking "Commission" in the first sentence and inserting the following: "Nuclear Regulatory Commission (in this section referred to as the 'Commission')".

(b) REFERENCES TO SECRETARY OF ENERGY.—

(1) Subsections j. and m. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) are amended by striking "Commission" each place it appears and inserting the following: "Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,".

(2) Section 11 t. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)(2)) is amended by striking "Commission" and inserting "Secretary of Energy".

(3) Section 170 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(f)) is amended by inserting after "Commission" the first 2 places it appears the following: "or the Secretary, as appropriate,".

(4) Subsections g., h., j., and m. of section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) are amended by inserting after "Commission" each place it appears the following: "or the Secretary, as appropriate,".

(5) Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended—

(A) in paragraph (1)—

(i) by striking "Commission" in subparagraph (C) and inserting "Department of Energy"; and

(ii) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate,"; and

(B) in paragraph (2), by inserting after "Commission" the following: "or the Secretary, as appropriate".

(6) Section 170 o. (1)(C), as redesignated by section 11(d)(1) of the bill, is amended—

(A) by inserting after "Commission" the first place it appears the following: "or the Secretary, as appropriate,"; and

(B) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate".

(c) REFERENCES TO REVISED STATUTES.—

(1) Section 170 g. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(g)) is amended by inserting "(41 U.S.C. 5)" after "Statutes".

(2) Section 170 j. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(j)) is amended by striking "section 3679 of the Revised Statutes, as amended" and inserting the following: "sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code".

(d) INTERNAL CROSS-REFERENCES.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "subsection" each place it appears and inserting "section".

(2) Section 11 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)) is amended by striking "subsection" each place it appears and inserting "section".

(3) Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by striking "subsections 170 a., c., and k." and inserting "subsections a., c., and k. of section 170".

(4) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended—

(A) in the first sentence, by striking "subsection 2 i. of the Atomic Energy Act of 1954, as amended" and inserting "section 2 i.";

(B) in the first sentence, by striking "subsection 170 b." and inserting "subsection b."; and

(C) in the second sentence, by striking "subsection 170 c." and inserting "subsection c.".

(5) Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended in the first sentence by striking "subsection 170 a." and inserting "subsection a.".

(6) Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in the last sentence by striking "subsection 170 e." and inserting "subsection e.".

(7) Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)) is amended in subparagraph (B), as redesignated by section 11 (d)(1) of the bill, by striking "subparagraph (3) of this subsection (o)" and inserting "subparagraph (C)".

(e) SUBSECTION CAPTIONS.—

(1) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended by inserting after the subsection designation the following: "REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES.—".

(2) Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by inserting after the subsection designation the following: "AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—".

(3) Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended by inserting after the subsection designation the following: "INDEMNIFICATION OF LICENSEES BY NUCLEAR REGULATORY COMMISSION.—".

(4) Section 170 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(f)) is amended by inserting after the subsection designation the following: "COLLECTION OF FEES BY NUCLEAR REGULATORY COMMISSION.—".

(5) Section 170 g. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(g)) is amended by inserting after the subsection designation the following: "USE OF SERVICES OF PRIVATE INSURERS.—".

(6) Section 170 h. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(h)) is amended by inserting after the subsection designation the following: "CONDITIONS OF AGREEMENTS OF INDEMNIFICATION.—".

(7) Section 170 j. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(j)) is amended by inserting after the subsection designation the following: "CONTRACTS IN ADVANCE OF APPROPRIATIONS.—".

(8) Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by inserting after the subsection designation the following "EXEMPTION FROM FINAN-

CIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.—".

(9) Section 170 m. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(m)) is amended by inserting after the subsection designation the following: "COORDINATED PROCEDURES FOR PROMPT SETTLEMENT OF CLAIMS AND EMERGENCY ASSISTANCE.—".

(10) Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended by inserting after the subsection designation the following: "WAIVER OF DEFENSES AND JUDICIAL PROCEDURES.—".

(11) Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by inserting after the subsection designation the following: "REPORT TO CONGRESS.—".

SEC. 17. EFFECTIVE DATE.

(a) Except as provided in subsection (b), the amendments made by this Act shall become effective on the date of the enactment of this Act and shall be applicable with respect to nuclear incidents occurring on or after such date.

(b) The amendments made by section 11 shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GEKAS: Page 32, line 21, strike "not less" and all that follows through "period" on line 22 and insert "once during each one year period".

Mr. GEKAS. Mr. Chairman, the amendment before us is a very unique idea. I believe we ought to adopt it. I would like to have the committees just tell me that they are going to adopt the amendment. As I understand it, this particular amendment was discussed in the committee, and I would like to conduct a colloquy at the appropriate time with any one of the Members so I might understand the sense of why this particular amendment was rejected in committee.

The amendment simply substitutes for adjusting the upward limitations for inflation every 5 years and brings it to a yearly adjustment of inflation. So the cap that we have at $7 billion would gradually increase if it increases at all on a yearly basis to adjust for inflation under my amendment, rather than every 5 years as the bill now calls for.

What this would do, if my amendment were adopted, would be to allow companies who are going to establish new nuclear facilities to be able to plan their cost outlays and their entire asset-liability sheet on a yearly basis. The quotient of every 5 years that is put into this bill may not give them enough projection ability to determine the cost of a new nuclear facility, for instance.

I would like to conduct a dialog and talk with any Member who wants to respond in order to inquire why the committee rejected this in the first place. Was it just a compromise for the sake of getting it through, or was it a good idea that was trampled on? I would like to know the answer.

Mr. SHARP. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Indiana.

Mr. SHARP. Mr. Chairman, what may not be apparent to Members who were not on the relevant committees last year was the enormous battle to move the cap from what some thought was a high level of $2 billion, as some Members advocated, to the $7 billion that we achieved. At that time those of us who wished to go on and have cost of living added on annually were continually defeated in that effort.

□ 1250

There was no cost-of-living increase as the bill was about to come to the House floor in the last Congress.

This year there has been some further improvement from the gentleman's point of view, since it is a 10-year authorization, a 5-year increment that will have a cost-of-living at that time. There is no principled reason. It had to do with the opposing forces.

Mr. GEKAS. It is a good idea whose time is yet to come.

Mr. SHARP. Some of the Members feel like we had a major victory to get the 5-year increment in, and we do admire what the gentleman is trying to do, but there have been some major victories the gentleman may not be aware of at this point.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. Mr. Chairman, I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I thank the gentleman for yielding.

I would also like to commend the gentleman for his thoughtfulness in preparing this amendment, but I would like to concur in the remarks of the gentleman from Indiana [Mr. SHARP], the distinguished chairman of the Subcommittee on Energy and Power.

It is a very complicated bill, a very delicate mosaic; and if we start moving the pieces around, and perhaps this is why all of the amendments that have been thus far offered have been shot down, because we do not want to disturb the compromise that has been very carefully worked out between the various committees, three of them, that have been working on this for 2 years.

We are right now at the threshold of passing this bill, and this is an 11th-hour amendment; and frankly I am going to have to regretfully oppose the gentleman's amendment.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from California.

Mr. MOORHEAD. Mr. Chairman, I thank the gentleman for yielding.

The idea sounds good. When we take up an amendment such as this, the costs of rearranging the finances on a yearly basis are much greater. We do not know what it would be exactly.

It is a different formula, a different situation that the compliance would have to adjust to.

We have got the 5-year adjustment. It was a hard thing for many people to swallow to get that 5-year adjustment into the bill, and also to raise the total limits from $800 million to $7 billion.

I think we have a much better chance of getting this bill through in the form that it is in. While the gentleman has an idea that may be adopted in the future, I think it would be a mistake to put it in the bill at this time.

Mr. ECKART. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Ohio.

Mr. ECKART. Mr. Chairman, I thank the gentleman for yielding.

I think the gentleman's amendment is thoughtful, and it is intellectually and economically honest.

Around here we index all sorts of things, Social Security, defense contract payments; but we cannot do this.

The CHAIRMAN pro tempore (Mr. MURTHA). The time of the gentleman from Pennsylvania [Mr. GERKAS] has expired.

(On request of Mr. ECKART, and by unanimous consent, Mr. GEKAS was allowed to proceed for 1 additional minute.)

Mr. ECKART. Mr. Chairman, will the gentleman yield further?

Mr. GEKAS. I yield to the gentleman from Ohio.

Mr. ECKART. Mr. Chairman, I thank the gentleman for yielding.

The gentleman is approaching this matter in a very thoughtful and intelligent way.

I would only hope being very good at reading the tea leaves around here, I am used to swimming upstream, but not swimming up the Niagara Falls.

The gentleman's amendment is very good, very thoughtful, and hopefully we can keep pressure on.

Mr. GEKAS. Mr. Chairman, I thank the gentleman. I do want to place this on the record.

I can sense what the outcome will be on the voice vote that is about to occur, but I am going to yell as loudly as I can "yes" when the Chair asks for a vote and would hope that your noes would be muffled.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The amendment was rejected.

AMENDMENT OFFERED BY MRS. COLLINS

Mrs. COLLINS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. COLLINS: Page 7, after line 3, add the following new subsection:

(e)(1) PASS-THROUGH OF DEFERRED PREMIUM COSTS.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end of the following new paragraph:

"(5)(A) The regulatory authority for any electric utility may exclude all or part of any amount paid as a deferred premium by a utility from the rates which the utility would otherwise be authorized to charge to its customers only in accordance with subparagraph (B).

"(B) If the net income of a utility increases by an amount equal to or greater than 10 percent during the period beginning 2 years prior to the payment of a deferred premium and ending in the year immediately preceding the payment of such deferred premium, then—

"(i) the regulatory authority shall balance the financial impact of such an exclusion on the utility and on the customers of such utility; and

"(ii) determine whether all or part of any deferred premium amount may be excluded from such rates.

"(C) For purposes of this paragraph, the net income of an electric utility for a year shall be determined by the regulatory authority based on annual accounting statements submitted by the utility to the regulatory authority.

"(D) As used in this paragraph—

"(i) The term 'regulatory authority' means the Federal Energy Regulatory Commission or the State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796 (21)), as appropriate.

"(ii) The term 'year' means the fiscal year of the utility used for purposes of submitting accounting statements to the regulatory authority.".

Mrs. COLLINS [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

Mrs. COLLINS. Mr. Chairman, my amendment goes to the issue of whether a regulatory commission should routinely allow a utility to pass through its cost of paying Price-Anderson insurance premiums to ratepayers.

In the past, to whom did a utility turn to pay its allegedly higher Federal income tax bills? Ratepayers.

Today, to whom are utilities looking to pay for the exorbitant cost of new plants or even those that have been abandoned? Ratepayers.

And, in the future, to whom are utilities going to turn to pay their Price-Anderson premiums if a nuclear accident occurs? Ratepayers.

Well, now it's time for Congress to tell utilities, "You have picked the pockets of ratepayers long enough. It's time you who run the utility companies, management and shareholders, really felt the financial consequences of your decisions."

My amendment protects the interests of ratepayers in a simple, straightforward way: It encourages a regulatory commission to balance the financial ability of a utility to pay these premiums, against the ability of its ratepayers to pay this expense. It simply states that if a utility's net income increases by 10 percent or more during the 2-year period prior to its payment of a deferred premium, and ending in the year immediately preceding such payment, then a commission would have the discretion to decide whether to exclude some or all of a utility's premiums from rates.

The need for this amendment is clear because it is uncertain that regulatory commissions have this discretion.

One fact, however, is certain. Ratepayers are facing higher and higher electric bills. Between 1981 and 1986, the average residential utility bill rose nearly $200 annually. Within the last year, ratepayers in Arkansas, Pennsylvania, Kansas, and Montana have been shocked to see their electric bills rise anywhere from 10 to 20 percent.

If ratepayers are left holding the bag for these premium payments, this will grossly aggravate their financial predicament. In my State of Illinois, and in States like Connecticut, California, Pennsylvania, Ohio, Washington, Arizona, Texas, Nebraska, Minnesota, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee, Virginia, Maryland, New Jersey, New York, Massachusetts, Indiana, Michigan, and Wisconsin—all of which have more than one nuclear generating plant—ratepayers will owe a considerable sum. For example, Chicago's utility, Commonwealth Edison, owns, or shares in the ownership of, 12 nuclear facilities. Therefore, Chicago ratepayers could be potentially liable for nearly $760 million in premium payments, or over 10 percent of the total compensation pool provided by this act. Clearly, this is an unconscionably disproportionate share that will have to be borne by Chicago's already overburdened ratepayers.

I believe this is grossly inequitable because ratepayers had no say whatsoever in their utility's decision to construct a particular type of generating plant. Such decisions were made by the utility's management, with the concurrence of its shareholders who ought to at least help bear the cost.

Now some will argue that utility management teams made this decision because nuclear power promised ratepayers a host of benefits, but these promises have proven to be largely illusory. Nuclear powerplants have been plagued by cost overruns. The construction of many have been delayed considerably, if they have been built at all. Yet, in each of these circumstances, utilities insist that ratepayers pay for these abandoned or nonfunctioning plants which won't generate a single kilowatt of electricity. Now they are asking ratepayers to pick up the tab if one of those that is operating has an accident. I say, again, "enough is enough."

Given the industry's current financial position, a sharing of the payment of Price-Anderson premiums will not work a hardship on companies. Overall, the utility industry posted a healthy 12-percent gain in net income in 1986—a substantial improvement over the 15-percent drop they suffered in 1985.

The financial health of this industry is so good that utilities are diversifying into a number of nonutility ventures, ranging from investments in aircraft leasing equipment, to running banks, to operating the Nation's largest drugstore chain. In fact, diversification has become such a hot idea in the industry that one utility analyst predicts more utilities will participate once they generate the needed cash. Therefore, there is absolutely no reason why this excess cash could not be used to pay some, if not all, of a utility's Price-Anderson premiums.

This amendment will cause little, if any, diminution in the attractiveness of utility stocks. On the contrary, Standard and Poor's current analysis of the electric utility says "benefiting from improved cash flow, investors can expect higher dividends for the balance of this decade." Indeed, shareholders are reaping these financial gains from the financial hardships that are being imposed on senior citizens, the poor and those on fixed incomes. Again, Mr. Chairman, there is no reason why shareholders cannot share in the payment of these premiums if it only means a small reduction in the higher dividends they will be receiving.

Finally, in addition to balancing the financial interests of ratepayers and shareholders, this amendment will promote greater safety and accountability in the nuclear industry. If utilities know their shareholders could be liable for paying Price-Anderson, they are likely to keep a closer watch over contractors to ensure plants are built properly, and over employees to make sure facilities are operated correctly.

Mr. Chairman, I offered this amendment in committee and it was defeated because my distinguished colleague, the chairman of the Energy and Power Subcommittee, Mr. SHARP, said utility commissions already have the discretion to do what my amendment asks them to do.

For too long, Illinois ratepayers, and ratepayers throughout this Nation, heard the hollow words of their regulatory commissions that they would protect them from exorbitant utility bills; but bills continued to go up, until

State legislatures and consumer groups put Commissioners on notice that they weren't going to tolerate the routine passthrough of utility expenses. And now, thank goodness, the Illinois Commerce Commission, like many State commissions, is carefully scrutinizing a utility's expenses before they are charged to ratepayers.

I think the same situation applies here. The mere suggestion that utility commissions have the discretion to apportion these costs is not enough. Congress has to put regulators on notice that ratepayers have paid enough and it is time utilities shared in the financial burden of their decisions.

Indeed, that is exactly the intent of my amendment. It sets out in positive law that, under certain financial circumstances, commissions shall balance the interests of ratepayers and utility shareholders, and make sure neither pays a disproportionate share of the costs associated with Price-Anderson.

I urge my colleagues to support my amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Price-Anderson was a simple idea, and it has been renewed every 10 years since 1957.

We are dealing with a dangerous technology, and people have strong views, and it is not surprising that many extraneous issues are being injected into this debate.

This is not the time or place to decide the transportation issues in the nuclear field. It is not the time or place to fix new relationships between DOE contractors and the Department of Energy itself.

□ 1300

It is not the place to deal with the subrogation of liabilities issue that we have discussed here over the last 24 hours. Particularly I would think this is not the proper time, not even the proper committees, all of them involved in a broad move to single out additional changes in the laws governing the use of nuclear energy; so if we have something there that needs to be changed, let us change it, but let us have some hearings and some orderly procedure, because make no mistake, this is a very wide ranging major change in the authority of State utility commissions and their relationships to nuclear utility rates; so I urge that the amendment be defeated.

Mr. SHARP. Mr. Chairman, I move to strike the requisite number of words.

It is with regret that I must oppose the gentlewoman's amendment. The gentlewoman from Illinois has been a strong and vigorous champion of the consumer, especially on energy matters that we have in the Energy and Commerce Committee.

Two things I think should be pointed out. First of all, this is Federal intervention with State regulatory authority. The fact is that the State of Illinois, or any other State, can at this point in their regulatory apparatus and through their Public Utility Commission, choose not to allow the passthrough or state under what conditions it would be allowed.

I would clearly want the record to show that if we do reject the gentlewoman's amendment and it is not accepted today, that is not an endorsement by the Federal Congress of how the public utility commissions should handle these costs should they ever have to be paid. That is a question that is currently left to the State public utility commissions, and which the bill before us will leave to the public utility commission. The gentlewoman raises some serious concerns and she would like to try to solve that problem, but we have decided not to deal with these in the bill. If we do not accept her amendment, that does not mean we deal with it, either; my point being that no one should therefore interpret the record as an endorsement of passthrough.

If we got to the merits of her proposal, which she has worked very hard on, one of the difficulties that we would have in doing this at the Federal level is that we would be dealing with only one very narrow spectrum of potential costs in a electric utility system.

Therefore, the public utility commission of Illinois or any other State could frustrate what we are doing, because of its ability in the regulation of the complex finances of that utility to find other ways to pass through these costs if it were so inclined to do so.

So we are somewhat inhibited in our ability to reach the desired impact, even though I know raising the tough issue may help get a strong point across, Mr. Chairman.

Mrs. COLLINS. Mr. Chairman, will the gentleman yield?

Mr. SHARP. I am happy to yield to the gentlewoman from Illinois.

Mrs. COLLINS. My concern, Mr. Chairman, is that even though we are leaving it to the States, there is no language whatsoever that addresses this question and provides a guideline for States to make those kinds of decisions. Surely they have the ability to do that, but they have not done it thus far. I cannot see in any language where it is said that they have this discretion. It is a positive statement to let them know in fact that it is there and they can use it as an alternative should they want to.

Mr. SHARP. Well, the gentlewoman is correct. There is no addressing of the issue in the bill before us either way.

Mrs. COLLINS. That is right.

Mr. SHARP. The gentlewoman correctly points this out, and I realize that creates distress for her. I do want the record here to be clear, whatever the outcome is on her amendment, that the bill has addressed her point, and by that I mean we have not endorsed the passthrough by passage of this legislation.

Mrs. COLLINS. Mr. Chairman, I thank the gentleman for yielding.

Mr. HASTERT. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment offered by the gentlewoman from Illinois.

Mr. Chairman, I support and commend the gentlewoman from Illinois for bringing this issue before the body. I certainly hate as a freshman to disagree with the learned and certainly acclaimed gentleman from the other side of the aisle, the gentleman from Utah, who was talking about that this is not the time.

What we have done in this piece of legislation is to put tremendous costs out there on the backs of somebody, and the somebody happens to be the ratepayer, the same somebody in the State of Illinois from which I come that happens to have paid for utility plants back in the 1960's that were supposed to cost $500 million and today cost $5 billion. They are picking up that cost.

I hate to disagree with the other gentleman who stood up in opposition to this bill, but it just so happens that I wrote the Public Utility Act, or rewrote the Public Utility Act in the State of Illinois during my tenure in the general assembly. I can tell you, Mr. Chairman, that if we remain silent on this issue, the commerce commissions will not pick that issue up.

I think it behooves us as Members of this Congress addressing this very, very important issue, that we do bring this issue before and allow commerce commissions to our various States to at least visit that issue, to make a decision whether they will pick up that cost and share it between ratepayers or utility companies or if the utility companies, in fact, can pay all of it, or if they cannot pay all of it then it should go to the ratepayer, but it should be a decision that is made by that utility company.

This language in this bill, and it is excellently drawn, actually allows a decision to be made. It does not mandate, but it tells the utility commerce commissions in each and every State that they have the right to come and visit this issue, that they are not foreclosed from visiting this issue and discussing it.

I think the language that the gentlewoman from Illinois put in this issue and in this bill is excellent, because it says if these utility companies, who for years have on the backs of the ratepayers been taking dollars, millions and millions of dollars to build these plants, and not giving anything

back, all of a sudden they are in a cash rich situation.

The gentlewoman brought out the fact that they are diversifying. They have so much money they cannot pass those dollars on to their stockholders. They need to take those dollars, and if they can share the cost and the burden of paying the insurance costs on this issue, then that is where that decision should be made; but the Utility Commerce Commissions in those States should not be foreclosed from making that decision. That is all that the gentlewoman from Illinois is asking to be done in this amendment.

It is an excellent amendment. It has a great deal of forethought. I support it very, very strongly.

Again I say as the person who wrote the Public Utility Act for the State of Illinois that told those commissions how to draw utility rates, we cannot afford to be silent on this issue. We must make a statement in this act that it is the intention of the Congress that they should have a right and they should have the ability to visit this issue and make their decisions.

Mr. Chairman, I rise in support of the amendment offered by the gentlewoman from Illinois.

As a fellow Member of Congress from Illinois, a State with 12 nuclear power facilities—more than any other State—I have seen the financial hardship placed on ratepayers as the result of the direct passthrough of utility insurance premiums. Illinois is particularly hard hit in that we are the largest contributor to the insurance pool for nuclear facilities which was established under Price-Anderson.

This amendment simply establishes that individual State utility commissions do indeed have the discretion to balance rate increases resulting from insurance premiums between both the ratepayer and the utility. In the past we have seen the direct passthrough of these costs with little attention paid to the ability of the utility to assume a greater portion of these costs.

Price-Anderson, when it was first established in 1957, was a regulatory document, but also a vehicle with which to provide incentives to private industries and utilities to venture into the development of nuclear energy. It has succeeded in large part because it served to protect these industries from financial dangers associated with the development of this new energy source. But I have a question: Who is protecting the consumer of this new product? The ratepayer seems to have been left out of the economic equation. We have a responsibility to not only protect the safety of our citizens, but to protect their pocketbooks as well.

This amendment is not an effort to steal profits from our electric utilities, but rather an effort to clarify the intent of Price-Anderson with regard to how our States regulate the passthrough of premium payments under this act. This amendment would only apply to utilities that show increases in net income of 10 percent or more for the 2 years proceeding the payment of the premium, thus insuring that the utilities are not asked to assume costs which they are simply unable to pay.

I think it is further important to note that the language of this amendment is really quite simple, it does nothing more than clarify that the States, and their regulatory authorities, have the right—and yes the responsibility—to do more than rubberstamp the passthrough of these insurance premiums to customers. However, and this is important, it does not require specific action, but leaves such actions to the discretion of the State regulatory body.

I know how my constituents feel about rate increases—helpless. The rules are made, the costs decided, and then the ratepayer is told to pay for something that he or she has had little or no opportunity to influence. It's time to give the consumer a little muscle in dealing with ever-increasing utility costs, and I believe that this amendment will provide our State regulatory agencies with a clear message as to the intent of Congress in this regard.

Mr. HAYES of Illinois. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first let me commend the gentlewoman for introducing this amendment.

Mr. Chairman, I rise in support of the gentlewoman's amendment.

As we discuss and debate the merits of extending the 1957 Price-Anderson Act, it has become all too clear that we are not nurturing an infant industry. It appears to me that the industry is alive and well and prospects for future profitability appear to be good. As my colleague from Chicago has pointed out, the utility industry posted a 12-percent gain in net income in 1986.

What we are talking about is a redistribution of the burden of liability. I believe this amendment strikes at the very essence of the whole aspect of assigning the cost of nuclear power risk to those who stand to profit from its success.

Granted, ratepayers have benefited from this source of power, but they have also paid a high and unequitable price for those benefits. Not only have they had to bear the burden of financing utility investments in nuclear powerplants, they have also had to pay for the risk those plants pose to their communities. Why? Because of the bottom line—the profit margin and the dividend margin.

It comes down to a basic question of economic fairness. Should a utility shareholder get increased dividends or should a low-income family do without food to pay their utility bill? Should a utility company protect their investors from a lower rate of return or should American wage earners fork out millions upon millions in higher utility payments to pay for the financial burden incurred by the decisions of shareholders and utility industry officials? In short should the poor get poorer while the rich get richer? Of course not.

That is why this amendment should be easy for all of my colleagues to support. It does not impose any undue financial burden on any particular party. It takes into consideration, which has all too often been disregarded, the financial situation of a utility company prior to any assessment of financial burden. That is only fair. If a company is making a good profit, it and its stockholders should be willing to share in the cost of insuring that it meets its liability expenses.

Ratepayers have paid enough. It is time to share the financial responsibilities which are currently being imposed on our Nation's senior citizens, the poor, and those on fixed incomes.

Let's give utility commissions the incentives they need to stop routine passthroughs of rate increase requests. Ratepayers have paid enough. The time to act on their behalf is now and I urge my colleagues on both sides of this Chamber to support this amendment.

Thank you.

Mrs. COLLINS. Mr. Chairman, will the gentleman yield?

Mr. HAYES of Illinois. I yield to my colleague, the gentlewoman from Illinois.

Mrs. COLLINS. Mr. Chairman, I thank the gentleman very much.

I just want to take the opportunity to mention that apart from balancing the financial interests of the ratepayers and shareholders, this amendment is certainly going to promote greater safety and accountability in the nuclear industry. If utilities know their shareholders could be liable for paying Price-Anderson premiums, they are likely to keep a closer watch over contractors to ensure that their plants are built properly and over employees to make sure that facilities are operated correctly. It makes a lot of sense for this amendment to be approved, and I certainly thank the gentleman for yielding.

Mr. KENNEDY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Collins amendment which would shift the risk of loss from ratepayers alone to an equitable burden shared by ratepayer and shareholders alike. Public utility commissions set rates based on the cost of generating electricity, plus a return to the shareholders that own those utilities.

Many Members argued effectively yesterday that the risk of nuclear accident should not be shifted to the utilities if the ratepayers will inevitably pay the price. Every person who made that case yesterday should vote in favor of this amendment today.

This amendment would encourage State utility commissions to make the shareholders pay a fair portion of the premiums required by Price-Anderson.

If you think increased liability is a bum deal for the ratepayers, then

come down here and vote in favor of sharing that burden equitably between ratepayers and shareholders.

This is peculiar industry, a regulated natural monopoly. The principle of free enterprise has always been that investors accept the chance of risk and reward. Investors in a capitalist system should bear that part of the risk.

Enough of this policy of socialism for the rich, free enterprise for the poor and the working Americans and the ratepayers alike.

Mrs. COLLINS. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY. I yield to the gentlewoman from Illinois.

Mrs. COLLINS. Mr. Chairman, I thank the gentleman.

I just wanted to point out another thing, that the mere assurance commissions have this authority is insufficient. These words are hollow. Ratepayers have been promised protection in the past by regulatory commissions and nothing was done until State legislators and consumer groups got together and made sure something was done. In Chicago, IL, we have something called the Citizen Utility Board [CUB], a regulatory watchdog organization.

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Although States have this right, they have not exercised that right. They have not used it. They have not worked on behalf of ratepayers and it makes sense for the House to pass this amendment. We are tired of socking it to the ratepayer. Ratepayers have the right not to be shafted every time a utility decides it wants to do something, such as building a new generating plant, which then fails to be completed.

I mentioned before that not 1 kilowatt of electricity has in fact been generated by some of these powerplants. If ratepayers cannot escape this liability altogether, certainly shareholders, who are deriving great financial benefits, and utilities who have all this money because they are cash rich right now, ought to be willing to give ratepayers a break for a change.

Mr. KENNEDY. Mr. Chairman, if I can follow up on the comments of the gentlewoman from Illinois, the fact is that for many years my company, before I came to this Congress, testified before many public utility commissions and without this kind of exchange on the floor of the House we would not be able to win in public utility commission meetings.

I very much appreciate on behalf of ratepayers the remarks that the gentlewoman from Illinois [Mrs. COLLINS] has put into the RECORD and I hope that those PUC's begin to read the message that this Congress is sending out that we are sick and tired of socking it to the ratepayers while the shareholders and the stockholders go free.

The CHAIRMAN pro tempore (Mr. MURTHA). The question is on the amendment offered by the gentlewoman from Illinois [Mrs. COLLINS].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mrs. COLLINS. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

Mr. SWIFT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this bill has an anomaly in it. It is an anomaly that simply says that if a victim is harmed by a contractor working for DOE, it goes through the orderly mechanisms and the victim is compensated. If that same victim is injured in the same way by an employee rather than a contractor of DOE they cannot go through that orderly mechanism. They have to go through the Tort Claims Act, which is an extraordinarily difficult and sometimes impossible process.

Mr. Chairman, that little glitch in this bill is irrational. It is unreasonable. It is unfair. It is unjust. It is inequitable. It is exactly the kind of thing that brings discredit on law and lawyers and legislators and governments. It is the kind of thing you cannot go home and explain to your mother, or your kids, or your constituents, let alone explain it to a victim, "I am sorry, Madam, if that guy who works for the contractor of DOE had caused your problem rather than that person who works directly for DOE, you would be compensated, but because of that little glitch you cannot be."

That is what people say makes people say frequently along with Dickens, "The law is an ass." It does not make any sense.

An amendment was offered in the committee, and it was passed in the committee, but the Justice Department opposed that amendment on the grounds that it was a violation of the doctrine of sovereign immunity. The amendment I was going to offer today deals with this same problem, this anomaly, in a way that answers every single one of the written objections of the Department of Justice. It had the support informally behind the scenes of other agencies that are working on this bill but not from the Justice Department. They are still hanging tough, coming up with a new set of reasons.

What they threatened is to have a veto of the entire bill if this one little glitch is not fixed in a way that is entirely to their satisfaction.

I have had many Members say that they would support this amendment. These are Members who have voted against the other amendments offered to this bill but they say this anomaly is ridiculous and they would support the amendment in this instance but, very frankly, I do not want to limit the House's flexibility in conference by running a risk of having an amendment defeated today and putting the House in a less flexible position.

My original proposal is in the Senate language and will be an issue in conference.

As one of my colleagues said, we are swimming up Niagara Falls today and I just do not want to risk having this amendment defeated. But I do want to say this to the leaders on both sides of the aisle and to the leaders of all three committees, no one has told me this is not a real glitch. Is there not some way we can get the Department of Justice to suggest how we can fix this problem in a way that is acceptable to them?

They have not been forthcoming with providing any suggestions of how to fix it. When we come up with suggestions they go down and tell us what is wrong with it and say if you do that, we are going to veto this, leaving us in the position of having no alternative but to pass a bill with something that is inherently ridiculous.

Mr. Chairman, I do not think we should be put in that position and I do not believe the Department of Justice should be permitted to continue to say they are against everything we come up with and not offer some kind of proposal that they can live with that deals with this anomaly.

Until they do, until the Justice Department is willing to come forward and make some proposal as to how we can deal with this anomaly, what are we going to call that agency? Are we going to call the agency the Department of Legalistic Nit-Picking? Are we going to call that agency the Department of Hair-Splitting and Instructionism? Are we going to call that agency the Department of Stubborn Silliness? Because until they come forward and tell us how to eliminate this anomaly we certainly cannot call it the Department of Justice.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. Are there any further amendments to the bill?

AMENDMENT OFFERED BY MR. CRANE

Mr. CRANE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CRANE: Beginning page 19, line 19, strike section 9.

Mr. CRANE. Mr. Chairman, my amendment is designed to abolish a provision of the bill that calls for the creation of a Presidential commission at a cost to the taxpayer of $1 million over 2 years, and the commission's function would be to in the event of an extraordinary nuclear occurrence or

meltdown or liabilities exceeded the $7 billion figure that the bill provides for, this commission would do three things.

First, it would recommend to Congress changes in civil procedures needed for prompt disposition of claims.

Second, it would establish standards for establishing priorities amongst claims.

Third, it would establish provisions for addressing latent injury claims.

My contention is, Mr. Chairman, that these are all functions in fact of the very committee that has brought this legislation before us today, and it is certainly within the realm of responsibilities of the Congress of the United States, and therefore it seems to me an extraneous and wasteful expenditure of taxpayer money to call for this special Commission when those responsibilities are vested here, and based upon a potential contingency that may be irrelevant after this Commission expires, which is after 2 years.

Mr. Chairman, after the Commission has expired and it has made these kinds of recommendations, if 20 years later we had an extraordinary nuclear occurrence and we exceeded the liability coverage that is contained in the legislation before us, we might have to create a new commission or certainly go back and do the work that the committees of the Congress are responsible for doing in the first place.

I would suggest, Mr. Chairman, that this is redundant, it is wasteful, it is unnecessary and for that reason I would urge my colleages to support the amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would ask the Members to just bear in mind the purpose again of Price-Anderson. It is designed to provide compensation for people who live near nuclear plants, at the perimeters. If you have a meltdown or serious accident these people get hurt. That is why we have strict liability and we have all the other protections. But we did a new thing. This law is renewed every 10 years. We did a different thing, which I think was solid and good and which would be disrupted and ended by this amendment. We said the first level of accidents can be handled by the company itself. If Commonwealth Edison has an accident in a plant about like the Three Mile Island accident, they have $700 million to take care of the people who are injured.

The second level is one that I would compare to Chernobyl, and that goes up to $7 billion, with extensive property damage, people killed, serious injuries. That is covered by the second layer.

But the question kept coming up, what about the occurrences beyond that where you have three or four nuclear powerplants involved and a serious meltdown and radiation all over southern Illnois and northern Illinois, and maybe two or three other States. What do you do then?

Nobody is smart enough or good enough to figure out 10 years from now what will happen if you have a real major disaster with several reactors involved and $7 billion is peanuts. So we set up a commission and we say, let us not have that happen and have to go back to the drawing board and figure out how we accomplish that. Let us put in place a structure now so that we will have the ability to sort out the different factors and decide what is a fair way of payment on this third level, this real disaster level.

The Commission does not cost very much, it does not last very long, and it might be the most important thing in our national life if it ever really comes to a serious disastrous event.

So I ask that the amendment be voted down.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois [Mr. CRANE].

The amendment was rejected.

Mr. SHARP. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it appears we are at the end of our extended discussion of this piece of legislation. I wanted to remind our colleagues of the status of things, should this bill fail to pass this afternoon.

I know that a number of our colleagues have worked very hard and in a very determined way to make additional changes in the Price-Anderson legislation. I participated in one of those proposals.

Mr. Chairman, I know that many are disappointed that they were not successful in that effort. I would suggest to those who have that feeling that they remember that failure to pass Price-Anderson today does not mean that there is protection available for the potential victim. What in fact happens is the current status quo obtains in all of the 110 powerplants that are somewhere in the process of producing power.

If we pass this legislation, we will be assuring that at least 7 billion dollars' worth of insurance is available to cover potential victims if there should be an accident. If we do not pass this legislation, there will simply be 710 million dollars' worth.

So there is a tenfold increase in terms of protection under this bill. Whatever your view is of how good a job we have done in improving the legislation, make no mistake about it, this bill is a substantial improvement over what will be the situation if we let it slip from our hands today.

So I would urge my colleagues to pass this legislation.

Mr. GEJDENSON. Mr. Chairman, I am pleased to rise in support of H.R. 2994, the Price-Anderson Amendments Act of 1987. As a member of the Interior Committee I have worked on Price-Anderson for over 2 years and am very gratified to see the bill finally reach the floor of the House of Representatives. I commend Chairman UDALL, Chairman DINGELL, Chairman SHARP, and Chairman ROE for their leadership in bringing this bill to the floor.

H.R. 2994 is a true compromise. The $7 billion liability limit in the bill falls far short of the unlimited liability limit supported by many Members. It is also much higher than the $1 billion liability limit that many other Members initially supported during the 99th Congress.

During the long debate on Price-Anderson I never supported unlimited liability, but I have supported a liability limit far higher than $7 billion. However, in the spirit of compromise I am willing to accept the $7 billion figure if no weakening amendments are attached to H.R. 2994.

I have always had a special interest in Price-Anderson because I represent a district that has four large commercial nuclear reactors within its boundaries, more than any other congressional district in the country. People all over New England receive the benefits of the electricity generated in eastern Connecticut, but it is the people of eastern Connecticut who carry virtually the entire burden of the risks.

One reason that I have some reservations about the $7 billion liability limit in H.R. 2994 is that the value of the property alone within a 10-mile radius of the three Millstone plants in my district is over $10 billion. In the unlikely event that a catastrophic accident occurred at Millstone, total damages could be far more than $10 billion in property losses because of damages resulting from personal injuries.

Nevertheless, the $7 billion in compensation authorized by H.R. 2994 offers far more financial protection to the residents of eastern Connecticut than the $700 million provided by the current Price-Anderson law. If the compromise agreement on a $7 billion liability limit unravels, then Price-Anderson will not be reauthorized and the liability limit for existing plant will remain at $700 million. It is in the interests of all Americans who live near nuclear plants that Price-Anderson be reauthorized and that the liability limit be raised to $7 billion.

H.R. 2994 also strengthens the commitment of the Congress to fully compensate victims for damages in excess of the liability limit. The bill gives the Congress the discretion to either levy an additional surcharge on the nuclear industry to pay for damages or pay damages from general revenues. If appropriations are needed to pay for damages in excess of the liability limit, the Congress and the President must respond with deliberate speed. The appropriations process should take days, not years.

Price-Anderson was first passed by Congress in 1957 to encourage the development of the infant nuclear power industry. Faced with a new uncertain technology, utilities, investors, and insurers were unwilling to build nuclear powerplants without an assurance

from the Government that they would not be held liable for unlimited damages in the event of an accident.

Thirty years later the nuclear industry is no longer an infant. Over 100 commercial nuclear plants are generating electricity in the United States. It is the only industry in the United States with a limit on financial liability in the event of an accident. Other potentially hazardous industries, such as the chemical industry, must bear the entire financial burden of the consequences of their actions. In the future, the nuclear industry should volunteer to take full financial responsibility for its actions.

As Price-Anderson has slowly worked its way through the legislative process during the 99th and 100th Congresses I have offered many amendments to it. Two provisions are contained in H.R. 2994 which I successfully attached as amendments to Price-Anderson legislation during the 99th Congress.

H.R. 3653, the original Price-Anderson legislative vehicle in the 99th Congress, required victims of a nuclear accident to file suits for damages within 3 years of the discovery of an injury, but in no event more than 30 years after the accident. The current Price-Anderson system has a 20-year statute of limitations. I offered an amendment to strike the 30-year statute of limitations and replace it with a requirement that victims file suit for compensation for damages within 3 years from the date they discovered an injury.

A discovery standard is preferable to a 20- or 30-year statute of limitations because of the latent and long-term effects of radiation. Radiation caused cancer often does not develop until 30 to 40 years after radiation exposure. A 20-year, or 30-year statute of limitations could arbitrarily prevent some accident victims from receiving compensation.

I also attached an amendment to H.R. 3653 to allow the NRC to borrow funds from the Treasury to compensate accident victims in advance of the collection of deferred premiums from nuclear utilities. This provision will significantly expedite the compensation for accident victims. In both H.R. 3653 and H.R. 2994 the $7 billion victim compensation fund is collected from utilities over a 7-year period. The borrowing authority provision allows NRC to borrow $7 billion immediately from the Treasury if it is needed to compensate victims. Utilities would then be required to pay both the principal and interest on the borrowed funds.

Throughout the 2-year Price-Anderson debate I have devoted a great deal of time to the issue of whether or not utilities should be allowed to pay for their defense costs with money from the victim compensation fund. My primary goals throughout this debate have been to prevent utility defense costs from significantly reducing the amount of money in the fund available to compensate victims, and to prevent utilities from engaging in litigation to delay the payment of victim compensation.

During the 99th Congress I successfully attached an amendment to H.R. 3653 to bar utilities from taking their defense costs from the victim compensation fund. This amendment was later struck from H.R. 3653 by the Energy and Commerce Committee. However, H.R. 1414, the original Price-Anderson legislative vehicle in the 100th Congress, did bar utilities from taking their defense costs from the victim compensation fund. During Interior Committee consideration of H.R. 1414 I fought to keep this provision in the bill, but was unsuccessful.

H.R. 2994 does not bar utilities from taking defense costs from the victim compensation fund. However, it does mandate strict court supervision over the use of the victim compensation fund for defense costs. Defense costs can only be taken from the fund if the court determines that the defense has litigated in good faith, has not made frivolous claims or defenses, and has not attempted to unreasonably delay prompt settlement of claims. In addition, the size of the victim compensation fund has been increased by 5 percent to help defray some of the costs of litigation.

When a single individual fights against a large powerful institution such as a utility, that individual is often overwhelmed. It is the responsibility of the court to redress this imbalance when it supervises the use of the victim compensation fund to pay from defense costs.

Mr. Chairman, I urge my colleagues to support H.R. 2994, the Price-Anderson Amendments Act of 1987. This bill significantly improves the Price-Anderson system and increases the pool of funds available to compensate victims from $700 million to $7 billion. H.R. 2994 deserves the support of all the Members of the House of Representatives.

Mr. MILLER of Washington. Mr. Chairman, today the House passed legislation reauthorizing the Price-Anderson Act. I voted for this bill, but did so with some significant reservations.

The bill does take us further along the road to making the nuclear power industry responsible for their actions. It raises the ceiling on liability for civilian nuclear powerplants from $700 million to $7 billion. It takes us further along the road to making safety the No. 1 concern of nuclear powerplant operators. But it does not take us as far along the road as we should have gone.

Mr. Chairman, I was disappointed that a number of the strengthening amendments like the Wyden-Sharp-Synar amendment making operators of Federal nuclear facilities responsible did not pass. It should have passed. We are the landlords of these Federal nuclear plants and we should demand that our contractors bear responsibility for their actions.

Having expressed these reservations, Mr. Chairman, let me say that we did make our deadline of passing a reauthorization bill before the August 1 deadline. I hope that when this bill goes to conference with the Senate, the conferees will take a second look at several of these provisions and return to us a bill which takes us further along the road to safer and more responsible operation of our Nation's nuclear powerplants.

Mr. SKAGGS. Mr. Speaker, three decades ago, the Congress decided that the nuclear power industry merited special protection during its infancy. For that reason, it passed the Price-Anderson Act of 1957 to limit the liability of nuclear utilities in the event of an accident. The Congress gave that law a lifespan of 10 years, expecting the industry would mature enough during that time to be able to stand on its own.

Thirty years later, the nuclear industry still relies on the Price-Anderson law to exempt itself from full liability in the event of an accident. Thirty years later, contractors who operate DOE nuclear facilities still enjoy total exemption from liability, even in the event of an accident caused by the contractor's gross negligence or willful misconduct. Thirty years later, we are still left with the dilemma that some victims of a major nuclear accident may go unpaid, and the taxpayer may foot much of the bill.

So, in the debate over amending and renewing Price-Anderson legislation, we need to determine whether the renewal law measures up to three standards:

Will the law give reasonable assurances of prompt and full compensation to victims of nuclear accidents?

Will it protect taxpayers from picking up the tab in the event of a catastrophic nuclear accident?

Will the law uphold basic American principles of justice and economics by holding nuclear industries accountable for their actions, and so provide sound incentives for safer operations?

The answer to each of the first two questions is a qualified "yes"; the answer to the last one, in too many instances, is "no." Although our country is clearly better off with this bill than without it, I am greatly disappointed that my colleagues did not join me in voting for several measures that would have significantly improved the bill's incentives for safer operation of nuclear facilities.

This is a bill that provides us better insurance if a nuclear accident happens, but does not provide us any better assurance that it won't.

On the positive side, these Price-Anderson amendments take an important step forward by increasing tenfold the compensation pool funded by nuclear power companies in the event of an accident, from $700 million to about $7 billion. This offers those who live near nuclear facilities—that is, almost all Americans—a better insurance policy, a greater certainty that damages caused by such facilities would be recompensed.

Similarly, the taxpayer would enjoy greater protection due to this increased compensation limit. Under Price-Anderson, damages above the compensation pool limit may be paid out of the U.S. Treasury. Obviously, the higher the compensation pool is, the less likely that our tax dollars would be used to pay for the damages caused by a major nuclear accident.

However, these can only be termed qualified improvements because the potential damages that a major nuclear accident could cause are well above the $7 billion limit. Back in the 1950's and 1960's, a compensation pool of $7 billion might have been enough, according to studies performed at that time by the Atomic Energy Commission, the predecessor of today's Nuclear Regulatory Commission. More recent estimates of potential property damage range from $15 billion upward. If these numbers seem high, imagine the damage that a complete meltdown of any nuclear powerplant could cause.

The place where the renewal bill could have made real progress was in improving incen-

tives for the safe operation of DOE nuclear facilities and in the safe transportation of nuclear wastes. I am very disappointed that efforts to do this failed.

I strongly supported the Wyden-Sharp-Synar amendment that would have held contractors at Department of Energy [DOE] nuclear facilities liable for damages caused by gross negligence or willful misconduct on the part of corporate management. Under current law, contractors at DOE nuclear facilities are entirely shielded from liability—in the event of an accident, they wouldn't owe a dime to the victims.

As common sense dictates, and as the Departments of Defense and Justice have testified regarding other Federal contractors, total indemnification of contractors removes normal safety incentives. If I were a contractor, I'd be embarrassed to admit to the public that my company refused all responsibility for its actions, and especially actions that were grossly negligent. This amendment would have made DOE contractors, such as the one that operates the Rocky Flats nuclear weapons facility in my district, that much more concerned about safety.

I also supported the Walgren amendment that would have had a similar effect with respect to nuclear waste transportation. It would have imposed a limited liability on firms transporting nuclear waste, but only for grossly negligent or intentionally harmful conduct. It would also have required these transporters to carry reasonable amounts of insurance.

In the event a nuclear waste storage site is located in a Western State, tens of thousands of tons of medium- and high-level nuclear wastes could be shipped through Colorado. Common sense tells us that a company that has some corporate funds at stake is going to be more safety-conscious than one that is entirely off-the-hook financially. Unfortunately, this amendment was also defeated.

Because of the greatly increased insurance this bill offers, I supported it. The protection it gives to accident victims and taxpayers is an important improvement over the current act. However, the safety gaps I have mentioned leave this bill flawed, and I intend to keep working in this area to make our Nation's commercial and DOE plants as safe as possible.

These safety gaps also serve to underscore the need for better-funded research and development efforts in energy technologies that are truly safe, such as solar power and renewable energies, and in technologies such as superconductivity, that promise to make better use of the energy supplies we have.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. GRAY of Illinois] having assumed the chair, Mr. MURTHA, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents, pursuant to House Resolution 234, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

□ 1330

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED

Mr. LUJAN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is the gentleman opposed to the bill?

Mr. LUJAN. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. LUJAN moves to recommit the bill, H.R. 1414 to the Committees on Interior and Insular Affairs, Energy and Commerce, and Science, Space, and Technology.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LUJAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 396, nays 17, not voting 20, as follows:

[Roll No. 293]

YEAS—396

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boulter
Brennan
Brooks
Broomfield
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeLay
Derrick
DeWine
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dyson
Early
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Howard
Hoyer
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shumway
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Spratt
St Germain

Staggers	Torricelli	Weber
Stallings	Towns	Weldon
Stenholm	Traficant	Whittaker
Stokes	Traxler	Whitten
Stratton	Udall	Williams
Studds	Upton	Wilson
Stump	Valentine	Wise
Sundquist	Vander Jagt	Wolf
Sweeney	Vento	Wolpe
Swift	Visclosky	Wortley
Swindall	Volkmer	Wyden
Tallon	Vucanovich	Wylie
Tauke	Walgren	Yates
Taylor	Walker	Yatron
Thomas (CA)	Watkins	Young (AK)
Thomas (GA)	Waxman	Young (FL)

NAYS—17

Atkins	Lowry (WA)	Solarz
Boxer	Lujan	Stark
DeFazio	Marlenee	Synar
Dellums	Myers	Weiss
Eckart	Obey	Wheat
Goodling	Sikorski	

NOT VOTING—20

Boner (TN)	Hammerschmidt	Morrison (CT)
Brown (CA)	Hawkins	Roemer
Daniel	Hubbard	Savage
Dickinson	Kemp	Stangeland
Dymally	Kennelly	Tauzin
Ford (MI)	Latta	Torres
Gephardt	Lott	

□ 1345

Mr. LOWRY of Washington changed his vote from "yea" to "nay."

Mr. CRAIG changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHARP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Indiana?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE PRIVILEGED REPORT ON CONFERENCE REPORT ON H.R. 27, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION ACT OF 1987

Mr. BONIOR of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until 5 p.m. today to file a privileged report on the conference report on H.R. 27.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. CHENEY. Mr. Speaker, reserving the right to object, if the gentleman would explain this further, I would ask, is this the conference report on the FSLIC legislation?

Mr. BONIOR of Michigan. Mr. Speaker, if the gentleman will yield, this is the FSLIC conference report. We are completing it right now, and we hope to get it done before the session is over, but we have no assurance that that can be done.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. CHENEY asked and was given permission to address the House for 1 minute.)

Mr. CHENEY. Mr. Speaker, I have taken this time for the purpose of discussing the program with the distinguished acting majority leader, and for that purpose I am happy to yield to the distinguished acting majority leader, the gentleman from California [Mr. COELHO].

Mr. COELHO. Mr. Speaker, I am happy to respond to the acting minority leader, the gentleman from Wyoming [Mr. CHENEY].

On Monday we will take up six suspensions, as follows:

H.R. 2672, VA Home Rehabilitation and Programs Improvement Act of 1987;

H.R. 2957, to enhance the VA National Cemetery System;

H.R. 1340, Agriculture Commodity Distribution Act of 1987;

H.R. 2309, Christopher Columbus Quincentenary Jubilee Commission amendments;

H.R. 1948, to designate a certain U.S. Post Office building as the "Oscar Garcia Rivera Post Office Building"; and

H.R. 2629, Alaska National Interests Lands Conservation Act amendments.

Following those suspensions, we will then take up the rule and the conference report on the FSLIC bill. Then following that, we will have the votes on any suspension bills that we might have.

On Tuesday, August 4, we will meet at noon, and we will consider H.R. 1315, the Nuclear Regulatory Commission Authorization for Fiscal Year 1988, subject to a rule; and House Joint Resolution 132, National Day of Remembrance of the Armenian Genocide of 1915-23, subject to a rule.

On Wednesday, August 5, we will meet at 10 a.m., and we will take up the Labor-HHS appropriations for fiscal year 1988.

On Thursday, August 6, and Friday, August 7, we will meet at 10 a.m., and we will consider H.R. 2686, the Public Works and Economic Development Act amendments, subject to a rule being granted.

Members should be put on alert that we will need to take further action on the debt limit bill, and we would hope to do that some time next week.

Mr. CHENEY. Mr. Speaker, I wonder if the gentleman might enlighten the Members as to what time we might expect votes on Monday to begin occurring?

Mr. COELHO. Mr. Speaker, as the gentleman knows, we cannot promise any particular time, but we intend to go through all six suspensions and go to the FSLIC conference report and then have a vote on FSLIC, if there is to be one, and then we will have any votes that will be required on the six suspensions. So it should be late in the day.

Mr. CHENEY. Mr. Speaker, I thank the gentleman.

With respect to the conference report on the debt limit, when does the gentleman expect to go to conference on the debt limit extension that we passed just earlier this week?

Mr. COELHO. Mr. Speaker, we hope to have it on Monday, but, of course, as the gentleman knows, we cannot guarantee anything because we do not know when the other body would consider it again. However, we would hope it would be on Monday so that we would be able to go to conference on Monday.

Mr. CHENEY. Mr. Speaker, finally, if the gentleman would answer this, I noted earlier on the proposed schedule for the next week that the farm credit legislation was on the schedule for later in the week, and I notice it is no longer on the schedule. Can the gentleman enlighten us as to when we might expect legislation dealing with the urgent farm crisis in America?

Mr. COELHO. Mr. Speaker, if the gentleman will yield further, there was some dispute in the Committee on Agriculture, and the leadership on this side worked out with the leadership on the gentleman's side an agreement that we would not put the farm credit bill on for next week, that we would put it on for the first week we are back in September, so that the Agriculture Committee would be able to work today and report out a bill by Wednesday of next week so that we would have it ready and so that with that the minority on the Agriculture Committee would withdraw their objections to proceeding under current order.

Mr. CHENEY. Mr. Speaker, would the gentleman anticipate that the Members should plan on votes next Friday, August 7?

Mr. COELHO. We would hope not, but there is no way we can guarantee to the membership that there will not be votes. The only thing that could occur would be one on the debt limit bill, but we have no idea of indicating to the membership as to when we would conclude that conference or have another extension, if necessary.

Mr. CHENEY. Mr. Speaker, I thank the gentleman, and I yield back the balance of my time.

ADJOURNMENT TO MONDAY, AUGUST 3, 1987

Mr. COELHO. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. COELHO. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1195

Mr. RAVENEL. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 1195.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

AGRICULTURAL NITROGEN MANAGEMENT ACT OF 1987

(Mr. STANGELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STANGELAND. Mr. Speaker, I am pleased to introduce the Agricultural Nitrogen Management Act of 1987. This legislation will add an important, though missing component to existing ground water protection programs and to the pending array of ground water research and information bills before Congress.

My bill is designed to minimize the impact of agricultural nitrogen and fertilizers on ground water and surface water quality by establishing a nationwide educational program aimed at the American farmer. Through increased education, public information, and the adoption of agricultural best management practices, this Nation can prevent many of its ground water and surface water quality problems right from the start. The American farmer, the fertilizer industry, the scientists, the appropriate Federal, State, and local officials—all of those groups will play a key role. My bill brings each of these players together to get the ball rolling and to emphasize the role of agricultural nitrogen in ground and surface water quality protection.

The need for this legislation is well documented. Today, agricultural activities are known to be one of the heaviest contributors to nonpoint source pollution of both ground water and surface water. We have come to realize that the overapplication of fertilizer can, in certain instances, contaminate ground water and lead to serious health problems. Farmers and other rural residents are the population at most risk, since they often depend on the private, untreated well water located below the farmed land. Minnesotans are particularly aware of this dilemma since ground water serves as a potable water supply for three-fourths of the population. Mr. Speaker, we are faced with difficult policy questions. In light of the environmental and public health concerns, how should we alter widely accepted farming practices without losing far-reaching benefits of crop nutrition?

The answer is to provide increased research, technical information, and site-specific best management practices.Proposals such as H.R. 791, the U.S. geological survey research bill, and H.R. 2253, the Environmental Protection Agency research and development bill, are helpful but do not fill all the gaps or meet all the information needs. As a farmer, I know we need to develop more information, spread the wealth of knowledge, and implement agricultural best management practices on a greater scale. These efforts, however, will undoubtedly require close coordination among Federal, State, and local authorities. And an some cases, farmers may need to make fundamental changes to their normal agricultural practices. I believe my bill will help get us started in the right direction at the right pace.

Section 1 of the bill states the act may be cited as the "Agricultural Nitrogen Management Act of 1987."

Section 2 contains various authorities and provisions related to the Department of Agriculture and establishes an agricultural nitrogen best management task force. Subsection (a) states that the purpose of the section is to authorize the Department of Agriculture to develop educational programs on agricultural best management practices to minimize nitrogen losses from all potential agricultural sources and practices.

Subsection (b) contains various findings including the finding that careful selection of agricultural best management practices will help farmers reduce the effect of agricultural practices on ground and surface water quality through judicious use of plant nutrients.

Subsection (c) which is the heart of the bill, directs the Secretary of Agriculture to establish an agricultural nitrogen best management practices task force consisting of eight specified members. Together, these representatives of the Department of Agriculture, the EPA, the Tennessee Valley Authority, and the American farmer should be able to coordinate a comprehensive approach to fertilizers and nitrogen management.

Subsection (d) provides that the functions of the task force are: First, to develop agricultural best management practices for agricultural nitrogen utilization in crop production; second, to develop educational and training material; and third, to disseminate educational materials to farmers.

Subsection (e) requires the task force to give a progress report to Congress within 2 years of enactment and describes specific contents of the report.

Subsection (f) defines the term "agricultural nitrogen" and the term "agricultural best management practices" for purposes of the act.

Subsection (g) authorizes such sums as may be necessary for each of the first 5 fiscal years after date of enactment.

Section 3 provides two amendments to section 319 of the Clean Water Act, which establishes a new nonpoint source management program within the Environmental Protection Agency. Subsection (a) amends the Clean Water Act to require that any State assessment report and any State Management Program be developed in consultation with the agricultural nitrogen best management practices task force established by section 2 of this bill. Similarly, subsection (b) amends the act to require the Administration of EPA to consult with the task force in preparing the Administrator's annual and final reports to Congress.

These amendments will highlight the important link between nonpoint source pollution and agricultural best management practices. Section 3 will also encourage greater consultation with and coordination among Federal, State, and local agencies. Since the recent enactment of the Water Quality Act of 1987, we are already beginning to see greater cooperation and consistency between the States and EPA. My own State of Minnesota is setting a fine example in this area.

Just recently, the State enacted the Minnesota Clean Water Partnership Act to meet its nonpoint source pollution needs, develop best management practices, and satisfy other requirements under the Clean Water Act. The new Minnesota law will help to identify the combination of education, incentives, and best management practices to tackle ground water and surface water problems across the State. My bill is intended to build upon these efforts, emphasizing the connection between agricultural and nonpoint

source pollution strategies, and strengthening the ties among Federal, State, and local agencies, and the American farmer.

Mr. Speaker, based on my experiences as a farmer and on testimony received by the Public Works and Transportation Committee, the Agriculture Committee, and others, I see a tremendous need for this bill. We must place greater emphasis on nitrogen management, agricultural practices, and their overall impact on water quality. My bill takes an important first step to address this need and provides a good springboard for further legislation. I hope in the coming weeks members of the Agriculture and Public Works Committees will take a close look at my legislation as we consider comprehensive ground water research bills. I believe the Agricultural Nitrogen Management Act of 1987 is something all of us can and should support.

CBS' FLAWLESS "TOUR OF DUTY" GETS HIGH MARKS

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, let me say to my colleagues that they are in for a pleasant and remarkable surprise on television this fall on Thursday nights at 8 o'clock hopefully for the whole season. It is a new series on the CBS fall schedule titled "Tour of Duty." Imagine, CBS is putting on the air a series on Vietnam—every week. I saw this superb pilot film a week ago last night, and I was shocked beyond words because the story does such unbroken honor to our combat forces—our men who served in Vietnam.

Those of you in this Chamber who are Vietnam veterans or Vietnam-era veterans will certainly be proud. Everybody in America who follows the proceedings in this Chamber should listen. I want you to know that I salute Laurence Tisch, the new CEO of CBS, and his programming staff. And I salute the creative producer, Zev Braun, who has years of experience as an officer in the Israeli Defense Forces, most of his service as an intelligence officer. These people have portrayed our men loving one another even under the unbearable stress of combat in Vietnam.

This pilot film is a remarkable accomplishment. There are no drugs, no foul mouths. There are officers who look and act and perform like leaders, and the enlisted men truly not only depending on one another and caring for one another but show love for one another—blacks, Hispanics, farm kids, California surfers, people of every type of background pulling together. Everything that I saw in my eight trips to Vietnam, seven as a journalist and one as a pilot ferrying airplanes over there, everything I saw for a decade on observing that tragic struggle for freedom is finally put on film in a positive but apolitical way. I cannot believe this is finally going to happen on television. Our men, and our Army nurses I trust, shown in an upbeat positive manner.

With all the rotten, mean-spirited films in circulation like "Full Metal Jacket" and "Platoon"—the dishonest lie that I call "Spittoon"—with their degradation of our servicemen, finally we have something of honor that we can watch, and share the experience—the sacrifice. I highly recommend this noble effort. I pray it sustains. It is coming into your homes in about 7 weeks. Look for "Tour of Duty". Watching this you can hold your head high if you are a Vietnam veteran—as can any American. Again, Mr. Tisch, thank you. Mr. Braun I salute you. Director, writers, actors, and crew, well done. God bless all of you, and good luck.

Mr. Speaker, here are some thoughts on "Tour of Duty":

Of the war, executive producer Braun states "genuine relationship of love and understanding developed between men of all backgrounds."

Another Braun quote "That we've managed to get a television series on the air is an important step in the country's maturing relationship with the war and the men who fought there."

Writers for the pilot include L. Travis Clark, and Steve Duncan. Clark was a "grunt" in the war and Duncan served as a naval officer on an aircraft carrier.

Takes "grunts" point of view because they wanted to deal with the reality of the war and the inherent dramatic quality of men in a wartime situation.

Show illustrates the blending of men from different cultures and geographic regions that war does. A black from the rural South, a black from the big city, a Jew from middle-class New York, a Hispanic from the Bronx and a "white bread" kid from California—Anaheim.

Of the chemistry of the show Braun notes "This led to a natural comraderie, a kind of male bonding of guys as they came to understand and like one another. Coming to love one another."

Says Braun, "We decided we are not going to sugar coat the language. It'll be tough, gutsy, and expressive, but it won't be the profanities we're used to hearing."

This pilot TV film was made at Schofield Barrack in Hawaii. M. Sgt. James A. Stephens, Vietnam veteran aided as technical consultant.

IRAN-CONTRA HEARINGS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. SOLOMON] is recognized for 5 minutes.

Mr. SOLOMON. Mr. Speaker, now that the Iran-Contra hearings are winding down, and a smoking pistol is nowhere to be found, the sum and substance of the whole matter can be summed up in one question that is yet unanswered: Has more money been spent on organizing the select committees and staging the hearings than was diverted to the Contras in the first place? And remember, we're talking American taxpayer dollars here, too—not the few bucks belonging to the Ayatollah that may have found their way to the Contras.

In a July 17 op-ed piece in the Washington Post, syndicated columnist Charles Krauthammer described the Iran-Contra hearings as being a show trial masquerading as a fact-finding mission. In keeping with that time-honored principle that the public has a right to know, I am today calling upon the majority leadership in the House to provide an itemized accounting of what this whole affair has cost.

How much has been spent on salaries and benefits for the committee staff and support personnel? How much has gone into supplies, equipment, and other office-keeping expenses? And what about the hearings themselves? How much has it cost to stage a television miniseries that has enjoyed a longer run than "Roots," "Shogun," and "Rich Man, Poor Man" put together?

Mr. Speaker, the public has a right to know. Congress may get away with exempting itself from the Ethics in Government Act, equal employment opportunities laws, occupational safety and health, and all of the other laws we impose on other branches of government, as well as the American people, but we have to come clean on this one. Is Congress any more reputable in the conduct of its business than is the executive branch which we so delight in investigating? Let's get out the facts concerning the Iran-Contra show trial and let the American people decide.

□ 1400

REPORT ON CONSTITUTIONAL CONVENTION IN PHILADELPHIA

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

Mr. GEKAS. Mr. Speaker, it is now July 30, 1787. I am reporting to you from the floor of the Constitutional Convention in Independence Hall, Philadelphia.

The delegates have taken a recess and will reconvene sometime next week; but in the meantime the delicate work of putting the documents together is going on right at this very moment. As I stand here in the Chamber to the side of the main hall, there is a little library section, and there five delegates who will constitute the Committee on Detail are pulling together

all the resolutions, all the votes, all the minutes, all the proceedings of the previous time spent in the convention for full presentation to the entire delegation when it reconvenes next week.

This Committee on Detail is perhaps doing the most important work of the convention thus far. There has been ferocious debate on how the Congress of the United States should be made up. There has been vitriolic and heated debate on whether or not the chief executive should be allowed to be President or king for life, or what term of office that chief executive should have.

The Committee on Detail has the job, along with James Madison and his notes, of putting this thing together in preparation for some final votes and final revisions leading up to the day that everybody hopes will produce a final basic document for the new government of the now governing colonies under the Articles of Confederation.

George Washington, who up to now has been very pessimistic about the outcome of this Convention, and who very reluctantly agreed to chair the Convention, realizing that the interests of the Thirteen Colonies were so widely disparate, that nothing could possibly come of another convention such as this; nevertheless, now he seems a little more optimistic.

I talked to him yesterday before he left on a fishing trip during this recess when he went over to Valley Forge, and he went to some fishing streams nearby. He went back to Valley Forge for the express purpose of standing among the mounds that remain of the time that he spent there with his valiant soldiers during the hectic times of the War of Independence; but more important and nearby there were some fishing streams. Gouverneur Morris of Pennsylvania guided him to those areas, so they could conduct a little fishing expedition. This shows something about General Washington. He could have returned to Mount Vernon; and if he had returned to Mount Vernon, he felt that that might have been a signal to all the other delegates that he is through with the convention and has no hope for any product.

His going to Valley Forge and sticking around nearby Philadelphia was a signal that indeed he has confidence that the work can be completed.

We are anxiously awaiting the final product of the Committee on Detail; and when we put that together, I believe it will be presented to the full delegation next week when they reconvene.

This is Congressman GEKAS reporting to you 200 years ago today from a hot summer in Philadelphia.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DANNEMEYER] is recognized for 60 minutes.

[Mr. DANNEMEYER addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

FUNCTION 500—EDUCATION ISSUES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Montana [Mr. WILLIAMS] is recognized for 60 minutes.

Mr. WILLIAMS. Mr. Speaker, much has been made recently of international competitiveness and this country's decline in the general area of productivity.

Among those factors which contribute to our ability to compete internationally is the condition of America's public education system.

I think most Americans agree with that, and one would find very few in this Chamber that would disagree with it.

Yet, this administration, whose policies have in large measure generated the deficits with which we are concerned, has consistently met this national crisis with only rhetoric accompanied by budget requests that would cut the funding for those education programs which underlie our national competitiveness.

I am going to provide for the RECORD a chart that outlines for fiscal years 1981 through 1987 a comparison of President Reagan's budget requests for education with the congressional budget resolution for education, and that chart also contains within it the final appropriations that the Congress passed for education.

In order to give this House some sense of that chart, and inasmuch as I do not have an enlarged replica of that chart to show today, let me share the numbers for just three of those years.

In 1981, the President's request for education was $13.5 billion. The final appropriation that year from the Congress was $14.8 billion.

Going down the chart and selecting the year 1984, the President's request was for $13.2 billion. The Congress appropriated $2,200,000,000 more than that or $15.4 billion.

The fiscal year 1988 Presidential budget request called, believe it or not, for a 46-percent cut in student aid funding, and limitation of most of the other programs supporting higher education.

Recommendations were also made incredibly to end, to abolish all Federal support for vocational education.

The Congress, however, has responded to the American public's demand for a first-class public education system.

Since 1981, the Congress has passed budget resolutions that have protected the high-priority education programs that this administration has sought to reduce or eliminate.

The fiscal year 1988 budget resolution is no exception to the congressional tradition of providing somewhat adequately for the Nation's education.

Within the budget, we have the function 500. That is the function that contains education funding, and function 500 assumes slightly more than $19 billion for all education programs, as opposed to the President's request, which is only $14 billion for fiscal year 1988.

This includes a 5-percent inflation increase for all education programs, and additional funds in higher-priority programs such as chapter 1, math and science, special education, Pell grants.

Our commitment to education funding comes at a time when this Congress is forced to deal with a record Federal deficit in budget targets that restrict growth in even the most essential programs.

The Congress' education budget will allow the continued funding for the high-priority education programs that have a proven track record of providing education opportunity for students at the elementary, secondary, and postsecondary levels.

Our budget also provides the breathing room to fund some of the new initiatives such as the education provisions that were included in the House-passed trade bill.

In spite of the more than $19 billion that will be spent on education by the Federal Government this year, we still have students who are eligible for programs who want to participate in those programs, but who cannot because of a lack of Federal funds.

Let me give you a couple of examples. Last year 80 percent of the American children who were eligible for Head Start could not get in. Eighty percent of America's low-income children who under the law are eligible to enter a Head Start Program were unable to do so because of not enough Federal Head Start money.

The Members of the House and the other body, and I believe most members of the administration, understand that the Job Corps is accepted now as a successful American education effort.

Ninety-five percent of the young people in this country who are eligible to participate in Job Corps cannot get in.

□ 1410

They cannot get it because there is inadequate Federal financial participation. Low income students are helped enormously to go to college by the Federal effort called Pell grants. Those are the grants that support America's neediest students to go to college. Those grants are limited to $2,300 per year. That is an inadequate amount to cover the cost of attendance, particularly in these times of

rising college costs and the result, of course, is that many of America's neediest students, bright young men and women, are denied the opportunity to go to college because of inadequate Federal funding of the Pell Grant Program.

We know these programs work. They have worked now for a quarter of a century. We just are not putting enough money in them to allow enough Americans to participate.

We really should be, I guess the term is throwing more money at these programs, because these are efforts that we know work. It is just the lack of funds that prevents even half of the young people who would be eligible to participate in these programs from doing so; but given the current fiscal situation, combined with the lack of willingness, we have to focus on the successes of these programs and our educational system, the successes that we have already experienced.

In a partnership with State and local governments, the Congress has worked to transform this Nation into a place of highly educated citizenry. We need to continue to protect this environment even in times of limited resources.

I look forward to the day, as do most of my colleagues, when this Congress and also a President will once again move toward more adequate funding of the education efforts that have proven themselves and that work. We may have to wait until we are more successful at reductions in the deficit. We may have to wait until there is a new President with a new economic effort or program, but so be it. We should not, however, wait too long, because we no longer live in a world as America is automatically because of the strength of our resources and our people that No. 1 unchallenged competitor. Rather, we now live in a world where other nations are competing with us very well indeed, and in some ways they are No. 1. In some areas they are first and we have fallen to second or beyond.

If America is going to be first in the marketplace of goods, it must be first in the marketplace of ideas. The world wants and hopefully still does honor America not only because of the glitter of our wealth, but because of the splendor of our ideals.

The Federal Government has been a good partner in making sure that our citizenry was appropriately educated to make and keep us No. 1 in the marketplace of ideas.

The deficit and an administration not fully committed to America's schools now challenges that tradition. I am hopeful that my colleagues will join in once again having an America that fully meets the challenge of making America first in competitiveness.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. SHUMWAY] is recognized for 60 minutes.

[Mr. SHUMWAY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. RANGEL] is recognized for 60 minutes.

[Mr. RANGEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

[Mrs. BENTLEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

PERMISSION TO HAVE UNTIL MIDNIGHT, FRIDAY, JULY 31, 1987, TO FILE CONFERENCE REPORT ON H.R. 27, FEDERAL SAVINGS AND LOAN RECAPITALIZATION ACT OF 1987

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight, Friday, July 31, 1987, to file a conference report on H.R. 27, Federal Savings and Loan Recapitalization Act of 1987.

The SPEAKER pro tempore. (Mr. GRAY of Illinois). The Chair would ask the ranking minority member the gentleman from Ohio [Mr. WYLIE] has this matter been cleared with the minority?

Mr. WYLIE. It has, Mr. Speaker. It has been cleared with the gentleman from Illinois [Mr. MICHEL].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

RIGHTS OF AMERICANS TO A CLEAN AND SAFE ENVIRONMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. FLORIO] is recognized for 60 minutes.

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, the President of the United States announced several weeks ago in his version of America's economic bill of rights what it is he thought was important for this Nation. As I read the President's statement, I was somewhat dismayed to see no mention anywhere whatsoever of the rights of Americans to have a clean and a safe environment. In its zeal to deregulate every aspect of our American economy, this administration seems determined to return us to the day of the belching smokestack and the polluted rivers, all in the name of some idealized concept of the "free market."

The American economy needs help. That is beyond dispute. We have to do everything we can to rejuvenate it. Sensible environmental protection will help improve our economy, rather than hurt it. We cannot pretend that there will be no costs associated with cleaning up pollution. But likewise, we cannot pretend that there are no costs associated with not cleaning up pollution. We can deal with, to use one example, the cost of asbestos cleanup, or we can deal with the cost of the problems associated with failing to clean up asbestos.

The American people have made it abundantly clear that they are unwilling to relinquish their fundamental right to a clean and unpolluted environment. Every public opinion survey that I have seen shows a deep public commitment to a safer, cleaner environment. One survey that I observed even shows that the American people are willing, by a 3-to-2 margin, to sacrifice economic growth for the sake of environmental quality.

We need to look no further than the Democratic 1988 environmental budget and the Republican alternative to see which party is more committed to protecting the Nation's national environment. The President has offered the American people an environmental budget for 1988 that gives Federal environmental authorities the same purchasing power as EPA had in 1976.

The President has ignored the fact that there are at least nine major new environmental laws that have been enacted since 1976 to protect the Nation's drinking water, to regulate hazardous waste disposal, and to clean up thousands of the Nation's toxic waste dumps. While the Federal environmental workload has essentially doubled in the last decade, the administration has continued in its unending efforts to erase environmental protection from the national agenda.

The numbers speak for themselves. Comparing the Environmental Protection Agency's 1981 budget to the President's 1988 proposal, we see that in nearly every major environmental program expenditures would be substantially cut. Resources to regulate toxic air pollutants would be cut by 24 percent. Water regulation would be slashed by 47 percent. Pesticide regulation would be cut by 19 percent, and funds to protect the public from deadly radiation exposure, such as radon gas, would be cut by 21 percent.

While comparing, as I was, the 1981 budget with the President's 1988 budget proposal provides us with a grim picture of the administration's commitment to environmental protec-

tion. It only gets worse when we compare the President's proposal with EPA's current funding needs. After examining EPA's own data on budget needs, the watchdog, the environmental safety organization, found that the President's budget proposal gave EPA less than half what it needs to fulfill its statutory obligations to protect the environment.

The President's budget would require our Federal officials to implement the environmental laws effectively with one hand tied behind their backs. It is little wonder that the American people have lost faith in this administration's willingness to protect the environment.

While the administration is seeking to gut funding of the Nation's environmental programs, we, the Congress, are putting money back into those programs. Appropriation bills for 1988 have given the Environmental Protection Agency some $600 million more than the President requested and some $1.1 billion more than EPA had in its 1987 budget.

In program after program, we have reasserted a Federal commitment to environmental protection. We have called for more money for programs to clean up asbestos in our schools.

By the way, this is done in the face of an administration effort this year to rescind, that is, to take back $50 million in this program to clean up the Nation's schools that the Congress allocated and authorized and appropriated last year, so it is not only that the administration wants not to go forward with this program, they literally want to take back money that has already been authorized and appropriated to clean up the Nation's schools of asbestos that is flaking in those schools. EPA has said that there are 15 million schoolchildren in 30,000 schools in the Nation. Those children are at risk unless we get about cleaning up those schoolrooms.

Likewise, we have provided for more money to meet the requirements of the Clean Water Act, to beef up enforcement of the Federal hazardous waste regulations and to clean up contaminated waste dumps under the Superfund cleanup program.

The effort to keep these environmental protection programs adequately funded is more than an issue of mere dollars and cents. We can only guess at the number of lives saved by giving EPA and other Federal agencies the funds they need to clean up contaminated drinking water, to regulate toxic pesticides, and to control dangerous air pollutants.

Mr. Speaker, it is time to set the record straight. We in the Congress have taken the tough steps necessary to protect the environmental rights of the American people. The sad truth is that this administration has set out a bill of rights which implies that as far as the environment is concerned, the American people have no rights at all.

Let me conclude with one last example, actually two last examples of environmental dilemmas that we have already in place that the policies of this administration are making worse.

I think it is fairly clear from talking to my colleagues and talking to constituents that the environmental problem of airport noise, and it is an environmental and in some instances a public health problem, is growing worse. The Environmental Protection Agency, under the 1972 Noise Control Act and the 1978 Quiet Communities Act has certain statutory responsibilities to work with the FAA, to try to monitor and evaluate airport operations, to minimize noise problems associated with airports.

It is clear that EPA is not performing these responsibilities. The explanation is fairly clear. This administration did not see fit to go and repeal those laws; rather, what they did was to defund, that is, to take away all of the money, that is, every single penny of the money for the noise program at EPA. Therefore, we have statutory responsibilities. We have a law, but the law is not being followed because the Agency which is charged with the responsibility for enforcing that law has been unfunded. Therefore, there is no one dealing with this type of a problem. As a result of increased air traffic, as a result of a reduced number of air traffic controllers, as a result of deregulation gone to an extreme, the noise levels, at airports around this Nation are getting worse and the system that we have put in operation to deal with it, to monitor it, is not working.

The last example I would give of a policy that is being pursued by this administration that is starting to be fully appreciated by the American people as a great impediment to the public interest being served is in the area of solid waste, a euphemism, of course, for garbage.

□ 1425

The garbage barge that we all saw on network television in one sense may very well be a blessing in disguise because it lifted for the public to see a serious problem to the national attention that some of us had been tracking but no one in the administration, particularly in EPA, has been particularly paying attention to. As we run out of space for the disposal of garbage in a traditional way of disposing of garbage, literally to dig a hole in the ground and put it in the ground with all of the environmental problems associated with using dumps, no one at the Federal level in the Environmental Protection Agency has been working to prepare the ground for the new types of high-technology disposal systems, resource recovery facilities.

If we are going to move in that direction, and I suspect it is inevitable, it is important that the Environmental Protection Agency put in place appropriate environmental safeguards to make sure that as we move in that direction we do not cause more environmental problems as we try to resolve one of our environmental problems. I have introduced legislation to deal with that problem by requiring EPA to spell out national uniform air emission standards for resource recovery facilities as well as testing standards for residual ash that results from incineration of garbage. Likewise, to spell out regulations for the safe operation of resource recovery facilities and worker accreditation systems so that those who will be operating these facilities will know what they are doing.

Mr. Speaker, in these brief few minutes I have tried to give a sense of the deficiencies that we see clearly flowing out of an environmental policy from an administration that has been very candid in suggesting that their approach to environmental protection is to get the Government off our back.

Mr. Speaker, that is not a legitimate approach to environmental protection. If the Government, if the public sector does not play a role in cleaning up our environment no else will. If there is anything the American people want it is not less environmental protection, it is more environmental protection.

In this regard the administration is totally out of step with what the American people want, expect, and I trust in the long run and hopefully not too much in the long run and I trust not too much beyond 1988, will insist upon and will get.

A BIPARTISAN FAIR HOUSING COMPROMISE PROPOSAL FOR THE 100TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. SENSENBRENNER] is recognized for 60 minutes.

Mr. SENSENBRENNER. Mr. Speaker, virtually everyone is in agreement that the existing enforcement mechanisms in the Federal fair housing law–title VIII of the 1968 Civil Rights Act—are wholly inadequate. The law was born at a time of crisis, following the tragic assassination of the Reverend Dr. Martin Luther King. Since its enactment, we have seen, because of defects in the law, a serious chasm between the dream and the reality of equal housing opportunity for all Americans. Existing fair housing law lacks an effective means of enforcement and relies heavily on informal methods of voluntary conciliation to achieve its ends. The current law apparently has shortcomings when a party or parties enter into conciliation in bad faith

As a former Secretary of Housing and Urban Development [HUD], Carla Hills, stated:

The most serious obstacle to an effective title VIII program is the lack of adequate enforcement provisions * * *

President Reagan noted as well that:

The gap in enforcement is the lack of a forceful backup mechanism which provides an incentive to bring the parties to the conciliation table with serious intent to resolve the dispute then and there. When conciliation fails, the Secretary [of HUD] has no place to go. In those few cases where good will is absent, the exclusive reliance on voluntary resolution is, in the words of former Secretary Carla Hills, an "invitation to intransigence."

The alternative legal remedy for a victim of housing discrimination is to resort to the courts. However, we know this is costly, time consuming, and not a realistic one for the typical complainant.

Virtually everyone agrees the key to new fair housing legislation is strengthened fair housing enforcement. Unfortunately, agreement on a mechanism strengthening fair housing enforcement has proven elusive. For a decade, Congress has searched for a workable and politically viable solution without producing needed law.

THE CONTROVERSY OVER ALJ'S

The search for an enforcement mechanism has also been a divisive one. In 1980, the last time the full House of Representatives voted on this issue, a pitched battle was waged on the use of administrative law judges [ALJ's] with litigation authority for HUD as a backup enforcement mechanism.

The Leadership Conference on Civil Rights favored the use of ALJ's because of speed and efficiency. The National Association of Realtors opposed ALJ's because they felt the ALJ's were inefficient and lacked sufficient independence from HUD. After a 33-minute rollcall vote, the ALJ proposal prevailed by a vote of 295 to 204. This was in a House of Representatives with 17 more Democrats than in the current Congress. There was also a Democratic President lobbying heavily for ALJ's for 4 days prior to the vote. Despite victory on the narrowest of margins in the House, the ALJ proposal proved too controversial in the other body and the fair housing bill died there.

I was a freshman Congressman in 1980, and I opposed the proposal of ALJ's with expanded litigation authority for HUD. I remember that time well and I think it can be safely said that no one wants to repeat that battle in the Congress. Unfortunately, this divisive proposal is once again included in this year's fair housing bill, H.R. 1158.

Significantly, there have been several developments since that 1980 battle promising to make ALJ's an even more controversial and troublesome issue in the 100th Congress.

First, the political climate since 1980 has somewhat changed. There are 17 fewer Democratic Members in this Congress and a Republican President—critical political differences from 1980.

Second, the legal climate surrounding ALJ's has made the question of constitutionality more controversial. Even in 1980, constitutional questions abounded concerning ALJ's for fair housing cases. In 1978, a legal opinion from the Office of Legal Counsel in the Carter Justice Department concluded that the ALJ provisions in the 1977 fair housing bill were "suspect under the recent Supreme Court decisions interpreting the seventh amendment." These views were echoed by Drew Days, Assistant Attorney General for Civil Rights in the Carter Justice Department, in the 1979 hearings.

Since the Supreme Court has held that rights currently conferred under the Act are in the matters of individual legal rights, and actions for damages for violations of those rights are triable by jury, *Curtis* v. *Loether*, 415 U.S. 189 (1974), *it would risk unconstitutionality* (*emphasis added*) to provide for damages in both courts and administrative forums.

In a 1978 letter to a Judiciary Committee counsel, the noted administrative law authority, Prof. Walter Gellhorn of Columbia Law School, agreed with the Carter Justice Department. He stated as follows:

As the bill is now drafted, I fear that it would evoke strong constitutional challenges, and I think *the likelihood of successful challenge is significantly large.* (*emphasis added.*)

He concluded by stating that:

[W]hat must be avoided, however, is too naked a transfer of power from the judiciary to the executive, which is what I think is wrong with the present proposal. A determination in an enforcement proceeding might well inure to the benefit of identified individuals (as happens, for example, when the National Labor Relations Board orders reinstatement, with payment of back wages) upon a finding that an employee has been discharged for a forbidden reason). That is different, however, from stirring judicial resentment by simply moving conventional *inter partes* litigation from one forum (a court) to another (an executive department).

Even advocates of the ALJ proposal conceded it is legally controversial. In testimony in 1979 hearings, E. Richard Larson of the American Civil Liberties Union [ACLU] stated:

The ACLU is aware that any administrative awards of monetary relief may raise an arguable conflict with the right to a jury trial guaranteed by the Seventh Amendments.

Since the 1980 battle, the Supreme Court has handed down major separation-of-power decisions—Northern Pipelines, Chadha, Bowsher, for example—that raise questions whether Congress can delegate article III judiciary power over fair housing cases to nonarticle III forums. In testimony last year before the Judiciary Subcommittee on Civil and Constitutional Rights, John Knapp, then general counsel for HUD, observed:

The constitutionality of having an administrative law judge, a non-Article III judge, award damages of that sort, it seems to me, is still unresolved. If anything I think it has been further complicated by subsequent judicial decisions, some of the ones that came out of the Bankruptcy Court or the bankruptcy judge cases like *Northern Pipeline.* I think when you read or at least to me when you read that case's description of what are private rights and public rights, the private rights being reserved to Article III, and if you lay that alongside the Supreme Court's decision in the Fair Housing Act case, *Curtis* v. *Loether,* which I think is the case which determines that a Fair Housing Act damage case invokes the consititutional right to a jury trial, if you lay those together, I think you get a somewhat fuzzy picture.

The risk of unconstitutionality was further heightened April 28, 1987, by the Supreme Court in its decision in Tull versus United States. The Court in Tull ruled unanimously that persons or companies sued by the Federal Government in civil cases for fines or damages have a consititutional right to a jury trial to decide whether they are at fault. This holding, of course, has major significance on the constitutionality of ALJ's deciding whether a landlord or seller has engaged in an unfair housing practice.

This significance was recognized in the other body where two hearings were held concerning the constitutionality of ALJ's in light of Tull. At the first hearing, a panel of law professors disagreed on the impact of Tull on ALJ's in the fair housing bill. One of the panelists, Paul Kamenar, a law professor at Georgetown Law School, member of the Administrative Conference of the United States, and executive legal director of the Washington Legal Foundation, summed up the constitutional problem:

It is our view that, based on the reasoning and holdings of *Tull* v. *U.S.* and *Curtis* v. *Loether,* a respondent in any such action would have a right to a jury trial notwithstanding the role of the administrative law judge and the court of appeals provided in the bill. In other words, S. 558 does not expressly deny the right to trial, it attempts to undermine that right by providing for an administrative mechanism and judicial review procedure that would not functionally accommodate a jury trial. There are no juries that assist ALJ's in any agency nor are there juries in the courts of appeals. The question, therefore, is whether Congress can constitutionally short-circuit a person's right to a jury trial in such a manner. *If Congress can do it in this context, then the right to a jury trial could be extinguished altogether by the Congress by merely authorizing ALJs to adjudicate any matter under federal law with review limited to the court of appeals.* (Italics added.)

The fears of unconstitutionality were confirmed on July 1, 1987, when the Justice Department's Office of Legal Counsel released its legal opinion concerning the constitutionality of ALJ's deciding fair housing cases. In a comprehensive legal analysis, the Office of Legal Counsel concluded the fair housing bill in its current form is and "would likely be declared unconstitutional on Article III and Seventh amendment grounds." The opinion also adds:

All concerns under the Seventh amendment and Article III would be alleviated, of course, by deletion of the provisions establishing an administrative hearing process.

We now have legal opinions on the constitutionality of ALJ's for fair housing cases from the Carter and Reagan Justice Departments. They both conclude that ALJ's for fair housing cases are probably unconstitutional. The question for this House is whether it wants to take the extraordinary step of defying the legal opinions of two different administrations and enact a fair housing bill with ALJ's. Do we want to go down the road the way we did with bankruptcy judges and Gramm-Rudman? Is it fair to victims of discrimination to enact a fair

housing bill promising immediate relief, but which will in all likelihood have its enforcement stayed for several years while constitutional questions are litigated?

Third, ALJ's are objectionable on policy grounds. It is manifestly unfair to include adjudicatory functions in HUD. Just last year, the realtors reached a compromise on the issue of testers and agreed to allow funding of testers by HUD. Thus, if the ALJ proposal were adopted, HUD would in effect be tester, investigator, conciliator, prosecutor, adjudicator, and executioner.

Moreover, ALJ's have been touted as more efficient than the overcrowded Federal courts. However, research by the Justice Department suggests the contrary. Assistant Attorney General William Bradford Reynolds testified to the following this year:

Our research demonstrates that the administrative law judge process simply does not provide speedy resolution of disputes. A survey of government agencies employing administrative law judges or their equivalent revealed the following average times for the processing of complaints: the National Labor Relations Board in FY 1986 averaged 767 days (25.6 months); the Social Security Administration in FY 1986 averaged 421 days (14 months); the Federal Labor Relations Authority averaged 467 days (15.5 months); and the Department of Labor averaged 398 days (13.3 months) in black lung cases. These numbers do not include the time required for judicial review of the ALJ's decision. While this survey is not exhaustive, it is representative and demonstrates that the ALJ process does not offer a speedy dispute resolution alternative than can realistically be counted on to provide meaningful relief to an individual who has been denied an apartment because of race and simply wants to be allowed to lease that apartment.

Prof. Rodolphe J.A. de Seife of Northern Illinois Law School recently observed in a working paper published by the Washington Legal Foundation:

The administrative process has largely become the antithesis of what we had in mind: it is cumbersome, expensive, duplicative, and represents an enormous waste of time and effort on the part of all the participants involved in administrative proceedings with little resulting benefits to anyone except the lawyers. Indeed, overjudicialization of the administrative process and the adversarial mentality, both syndromes of the legal profession's lack of creativity and reluctance to accept changes, have all but destroyed the usefulness of the administrative process as envisaged by its original proponents half-a-century ago.

There are problems concerning the independence of ALJ's. This is why an independent corps of ALJ's has been advocated by some Members of Congress and some administrative law judges themselves.

ALJ's are also inappropriate for civil rights cases. There is a lot of emotionalism over a discrimination case which one wouldn't find in the typical cases decided in ALJ's now. Jury trials have been successfully used in discrimination cases. This month's Trial magazine notes that, "experience shows that juries are responsive in race discrimination cases." Civil rights practitioners admit more trust in a jury system rather than in an administrative system. Jack Greenberg of NAACP Legal Defense and Educational Fund, Inc. indicated such a view in 1979 concerning the fair housing bill. He said:

Our reason for urging this change (de novo proceeding in federal court for a prevailing complainant in an ALJ proceeding) is grounded in our lack of confidence in the ability of the bureaucracy to handle adequately the high volume of complaints with which we will be faced. To say this is not to express a criticism of Secretary Harris. The fact is that there are no successful models in terms of organization and expertise among our civil rights agencies in the federal bureaucracy charged with similar enforcement responsibility. Given the relative importance of the rights with which Congress is concerned and our experiences with the other agencies, it is more appropriate to err on the side of caution.

A COMPROMISE TO BREAK THE DEADLOCK

Basically, there has been a deadlock on the enforcement issue—with the leadership conference favoring administrative enforcement—ALJ's—and the National Association of Realtors favoring judicial enforcement—the Justice Department bringing suits in Federal district courts. I readily concede I have contributed to the deadlock. Last year, I introduced the administration's fair housing bill which proposed judicial enforcement.

Mr. Speaker, I come here today to announce that I believe it have a compromise which can break this deadlock. The basic notion behind my proposal is that it could achieve the same goals of the ALJ system in this year's fair housing bill, H.R. 1158: strengthened HUD enforcement, expeditious resolution of the discrimination issue, emergency relief for discrimination victims, and a process which would not require money or a great deal of time from the victim.

I believe my proposal has important advantages over the ALJ system: First, it does not appear to be controversial on constitutional grounds and thus not as likely as the ALJ system to invite litigation staying enforcement of a new fair housing law for several years; second, it is faster—cases could be heard within 45 days of filing an action rather than 120 days; third, it is likely to be acceptable to the National Association of Realtors and could command a veto-proof consensus that important civil rights legislation deserves.

My proposal centers around HUD enforcement through consolidation of an action for an injunction or temporary restraining order with a jury trial on the issue of discrimination. The jury's decision would be res judicata on the discrimination issue in a subsequent lawsuit for damages. This enforcement mechanism provides for expedited treatment of unsettled housing discrimination cases because the Federal courts are required to put these cases at the top of their calendar. It also preserves the right of a jury trial on the issue of liability in accordance with Tull. With the jury's decision being res judicata on the discrimination issue, the complainant's interest in damages is aided because respondents are likely to settle at this point. Even in the case of no settlement, the complainant should be able to secure counsel on a contingency fee basis to bring a lawsuit for damages. Finally, HUD's ability to obtain settlements during the conciliation process is strengthened because it now could go to Federal court for expedited enforcement.

The enforcement action would come into play after conciliation failed. The action for injuctive relief or a TRO could provide a home for an aggrieved party who needs housing immediately. It could also prevent the respondent from renting or selling the dwelling in question.

It should be noted that this proposal would include a provision protecting innocent third parties. In addition, the aggrieved party would still have the right to intervene in the proceeding.

My proposal requires significant concessions by me and the realtors. Despite my past opposition, I will support granting authority to HUD to bring not only temporary restraining orders or other preliminary relief but actual fair housing cases in Federal courts under a unique procedure assuring prompt relief for discrimination victims. HUD litigation authority is a crucial ingredient to this year's fair housing bill. Indeed, in their January 21, 1987, "Dear Colleague" letter supporting H.R. 1158, the distinguished vice chairman of the House Judiciary Committee, HAMILTON FISH, Jr., and the distinguished chairman of the Judiciary Subcommittee on Civil and Constitutional Rights, DON EDWARDS, stated the following:

Mr. President,

Importantly (italics added), the powers of the HUD Secretary would be expanded by granting him the authority to seek a temporary restraining order or other preliminary relief in discrimination cases when he determines that prompt judicial action is necessary.

Moreover, my proposal signifies that I am willing to oppose the administration of my own party on this particular issue. It was only last year I introduced a fair housing bill on behalf of this administration. This is a substantive change in an attempt to make fair housing a reality in the 100th Congress.

Mr. Speaker, I have worked closely with Chairman EDWARDS, the National Association of Realtors, and the Leadership Conference on Civil Rights over the past 2 months in crafting a bipartisan compromise to bring us a stronger Federal fair housing law in the Congress. I believe the tireless efforts of the realtors should not go unrecognized. By conceding on an important item—HUD litigation authority—the realtors have made it possible for me to offer something new and different to break the logjam on fair housing. The realtors have gone the extra mile so that this Congress can reach agreement on a vital civil rights bill. They have simply asked for fairness entitled to them and all other Americans under our Constitution.

I also compliment Congressman EDWARDS, the chairman of the Judiciary Subcommittee on Civil and Consitutional Rights, for his patience, understanding, and willingness to reach a compromise. He is a good friend and I look forward to continuing to work with him on a compromise. I hope he will agree that the issue of ALJ's is too controversial and, as a practical matter, detrimental to the cause of strengthened fair housing enforcement.

Finally, I appreciate the Leadership Conference on Civil Rights for their efforts and willingness to hear my proposal. They acknowl-

edged to me personally the merit in my proposal and, in fact, have not rejected it outright. They recognize it goes further than any alternative to ALJ's they have seen. They know I have conceded something on which I previously have taken a strong public position in order to bring something new and different to the bargaining table. In addition to this, I have indicated a willingness to make concessions on other contentious issues in the fair housing bill. The leadership conference position to date has been unyielding. I gave up something important. What I am asking the leadership conference to compromise is not unreasonable—give up the controversial ALJ approach and join a HUD litigation proposal which does the job better than ALJ's. It is difficult to unilaterally make concessions while the other side does not reciprocate.

I think the choice on fair housing in the 100th Congress is clear: either we go to war over ALJ's like we did in 1980, or we go with a compromise proposal to reach a bipartisan consensus as we did in 1982 in extending the Voting Rights Act. I am looking for a fair housing law, not a fight over fair housing. Members of this body should know I, and the realtors, offered a viable compromise. The clear opportunity to avoid a conflict over badly needed fair housing legislation rests with the Leadership Conference on Civil Rights.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. FRANK] is recognized for 60 minutes.

[Mr. FRANK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. BONIOR] is recognized for 60 minutes.

[Mr. BONIOR of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

ORDER OF BUSINESS

Mr. KOSTMAYER. Mr. Speaker, I ask unanimous consent to proceed for 10 minutes with the permission of the gentleman from Texas [Mr. GONZALEZ] who had reserved this time previously.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

DEFICIENCY IN THE PRESIDENT'S FISCAL YEAR 1988 BUDGET REQUEST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. KOSTMAYER] is recognized for 10 minutes.

Mr. KOSTMAYER. Mr. Speaker, I rise today to participate in this important special order and to note serious shortcomings in the President's fiscal year 1988 budget request. Today we are focusing on the President's environmental budget. In my opinion the administration's record in this area has been nothing short of a national disgrace.

One aspect of our environmental debate concerns the preservation of our natural and cultural resources. This is one of the important challenges facing our country today. Unfortunately, however, the administration has failed to recognize the seriousness of this issue and has instead thwarted the efforts of both the Congress and the private sector. The elimination of funding for new land acquisition and the Historic Preservation Fund are just two examples of the administrtion's short sightedness and ill fated attempts at policymaking.

Established in 1976 as a means to provide a continuing source of funding for historic preservation, the Historic Preservation Fund has allowed us to develop a system for the identification, evaluation, and protection of our historic and cultural resources. Examples of programs funded through the Historic Preservation Fund include: Operation of a Main Street downtown revitalization program, development of statewide historic preservation comprehensive plans, and distribution of and instruction in technical preservation information. In addition, another major area provided for by the Historic Preservation Fund is the evaluation of resources for listing in the National Register. In 1986 alone, State historic preservation officers were able to make 3,153 nominations to the National Register, adding 55,268 structures to that distinguished list.

However, since 1983, the administration has requested no appropriations from the fund. Only strenuous opposition from the Congress and the public has prevented these cuts from going through. Although Congress has appropriated approximately $26 million annually, this modest sum does not come close to meeting our national need. Estimates for the cost of restoring endangered national registered properties alone exceed $300 million. It is imperative that we provide adequate funding for the Historic Preservation Fund if we are to ensure that all aspects of our culture are brought into our resource protection process. I encourage the administration to improve its very bad record in this area.

The issue of preserving open space is another important issue facing us today and yet the administration has sought, year after year, to practically halt new parkland acquisition. In fact, this year's budget request for acquiring parkland is 82 percent below the amount approved by Congress last year. The administration's request provides only enough funding for emergency and hardship acquisitions. Quite simply, the fiscal year 1988 budget request completely eliminates funding for new acquisitions from the Land and Water Conservation Fund. The LWCF is the single most important source of money for the purchase of public outdoor recreation areas. This action is particularly disturbing considering the fact that the 1986 report of the President's own Commission on Americans Outdoors recommended action to set aside adequate land for future recreation use and urgently noted the loss of 1.4 million acres of open space each year.

The consequences of this decision to fund no new acquisitions is disturbing to say the least. The Land and Water Conservation Fund is perhaps the best example of an effective and cost efficient Federal-State partnership. Since 1965, with its matching grants to States program, the LWCF has funded 33,886 projects which resulted in the acquisition and preservation of some 2,330,068 acres. In that period, the Federal Government has made available over $3 billion to fund these projects. This money has not only been matched but often surpassed by State and local funds. Nevertheless, in the very year that the President's Commission on Americans Outdoors has said that our parks are overused and overcrowded, the administration's budget proposal prevents the acquisition of any new lands to meet our increasing needs.

This decision is ill advised and, quite frankly, makes no economic sense. It is estimated that the current backlog for the National Park Service alone is $1 billion. Land prices for unacquired land continue to escalate at an approximate rate of 7 percent annually. Thus, the National Park Service needs $100 million per year just to stay even with inflation. Using these assumptions, it would follow that it would take 15 years to take care of the current $1 billion backlog even if the NPS received $100 million per year. Sadly, unless we identify and protect our Nation's natural areas, we will be forced to watch them disappear one by one to competing uses. It is therefore of the utmost importance that we provide for a continual income stream dedicated solely to the preservation of our Nation's magnificent outdoor heritage.

Mr. Speaker, we must do better and the administration must carefully reexamine its priorities. The preservation of our natural and cultural heritage is, as it should be, a high priority and it is time that the administration recognized this.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 27, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION ACT OF 1987, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 100-255) on the resolution (H. Res. 236) waiving certain points of order against the conference report on the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal Home Loan Bank System, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, today I proceed along the lines I had initiated some time back in my advice to the privileged orders. I had quite a number of inquiries the last time I referred in that sense to the style, and the reason is that the style of addressing the privileged orders is adopted from a great Revolutionary cause, a man who served as George Washington's Army chaplain for a while, who was also a great pamphleteer and a companion in that day and time of Tom Paine and the other celebrated radicals of the day and pamphleteers of the day who, after the beginning of the American struggle for independence, went to continental Europe and found themselves immersed in the midst of the French Revolution which at that time we could roughly consider and equate by saying that it would be quite proper in trying to correlate comparisons, if that is possible.

We could equate the French Revolution in that day and time, the Jacobins, and their ferociousness as pictured in England, with the 20th-century Russian Revolution and the bolshevism so much feared in the 1920's, and up to World War II, and since then the obsession with anticommunism and the misperceptions of that outer world that has been the scene of so much cost in blood and treasure to us as sequela wars after World War II.

The reason is that Joel Barlow, the name of this great revolutionary figure, who by the way was of those that had such a vast imaginative mind that he could write an entire epic poem which he styled, "The Columbiad" which peering into the future he foresaw what turned out to be the costly Civil War. He predicted that based on the existence and tolerance of slavery at the time that the day of reckoning was inevitable, as he said in his words, as he peered into the future.

He envisioned in his epic "Columbiad" Columbus coming back in a later century and viewing what had been wrought since his discovery and so Joel Barlow addressed his essays to the privileged orders of a Europe even anticipating the terrible civil war known as the French Revolution and the consequent concerns in the then English establishment which of course was reflected in its colonies in the New World.

I think that we should at this time of recollection, and ironically a time in which we are being called at the point of 200 years almost of celebrating the anniversary of our form of government, to ponder on those minds and their writing and their thinking and see if we, too, in our day and time can be capable of rising to the point of reaffirming. At this point I have developed three main attempts to express my concern about the developments that are now involving our Nation in what I consider to be one of the most serious, or series of most serious constitutional crises we have confronted.

□ 1440

If indeed some 13 years ago we were embroiled in a first-class constitutional crisis, it was certainly due to the fact that we were allowing a period of time that had elapsed in our refusal to confront prime constitutional issues as envisioned by the men who 200 years ago were in the midst of preparing the document we call our fundamental law or the Constitution.

It was the biggest fear of all of these men that the country would result with a national executive, the words they used during the constitutional debates were "chief magistrate." Finally the word "President" evolved as it was recognized that one of the biggest failures for the period of the Articles of Confederation was the absence of a unified, unitary power that could execute or carry out the policies that the Continental Congresses had wrought or had sought to bring about.

But the fundamental issues then, again historically speaking, ironically confront us today. The setting is different, a world never once in the most imaginative mind ever conceived by that generation of Americans. I think the significant thing, as I said earlier, is that the first 10 years of our national existence, the first and second Continental Congresses, there was no such thing as an office of an executive agent much less of a President-type of office because of the fear. Now one of the big fears and one of the big reasons impelling the migration not only at that time but even up to 100 years later, almost, the revolutionary wars in Europe, the last one which erupted and propelled hundreds of thousands of immigrants to our country was the 1848 revolution, and those subsequent upheavals in Europe. And every one of them, even as late as the Kaiser in his day and time, at the turn of the century, developed because of the fear of king-made wars over which the people had no control. So the constitutionalists, those writing the Constitution, placed article II, executive branch, the Presidency in article II, not in article I. Article I is the Congress, the people's agents, the people's representatives supposedly.

But what has happened here, and this is the reason that I very much perhaps presumably and presumptuously offer the advice of the privileged orders which in previous remarks I have included my colleagues in the Congress as being a part of that hierarchial structure in our society today that we could call privileged orders, because we are privileged. Even from an economic standpoint, our wages would rank in that upper 10 percent.

But above all, what has happened though, almost imperceptively has been a corruption in the processes. It was intended that if indeed and in fact such an office as the Presidency should have to be provided for it would be so restricted, it would be so hemmed in that under no circumstances would a President ever on his own get the country involved in a way. So the power to declare war was exclusively, exclusively placed in the Congress and nobody else.

When, after 1940 and the first peacetime draft and subsequent to that, the declaration of war in December 1941, a President was given the power to conscript an American and impress him into service. The fact that an amendment had had to be offered and accepted in the 1940 debates on the first peacetime draft in the history of our country, provided that under no circumstances could an unwilling American be conscripted to serve outside of the continental United States except and unless a declaration of war, naturally by the Congress, or explicitly provided so by the Congress. But we lost sight of that proviso with the "hot" phase of this great conflagration known as World War II.

I recall vividly that there was nobody doing anything but rushing to the enlistment stations to volunteer. The ones who were the most unhappy were those who, for whatever reason, were not permitted to serve, either physical or otherwise. But subsequent

to World War II and the "hot" shooting phase of that war terminated, what was overlooked was that we continued a system of improvised conscription. Therefore, we developed the twilight wars, the Presidential wars, if you please, which today is the great prime question confronting the American people and which, hanging over our head like Damocles' sword, endangers the very, very ability to reaffirm our traditional constitutional representative form of Government first and foremost.

Now we have not reached the 200-year mark yet. This year we are celebrating the writing of the Constitution which actually will not really be the 200th year mark until September, at which time we can properly say that it was 200 years before that it was completed. But it was not adopted by two-thirds or three-fourths of the Colonies, our States, until later.

So the first Congress did not convene until March 4, 1789. Even George Washington, who at that time could have through his tremendous moral suasive power, and in fact that was the fear expressed by John Adams, a bitter enemy of George Washington. We like to think that those were halcyon days of great comradery and respect, but there were bitter altercations. And John Adams used to compare George Washington by describing him as "That tall Virginian who believes he was heaven sent, Buddhaed and spurred, ready to ride on the hapless backs of mankind." And he feared "Well, is George Washington going to try to become some kind of a king here?" In fact, there was debate at the time as to just what would be the title of such an office as the President, even though the words they debated back and forth were "a chief magistrate" and some thought of "His Excellency." Others said, "No, that is too much, the trappings of aristocracy and not of democracy nor one of representation."

So they just said a plain, "Mister" suffices. But George Washington, of course, being of the stature that he was, respected the very, very document that he had helped to construe and construct and therefore that did not develop.

But almost instantly, soon after and as the party cleavages developed and George Washington in his farewell address expressed fear about the partisan spirit that was liable to develop but at that time the two main streams of political factionalism developed into the Federalists and the Whigs. Roughly speaking, one became the fountain or source or the channel through which the Democratic party, as we recognize it today, is called and the other was perhaps, roughly speaking, the predecessor of the Republican Party. But even then and not long after, we had the first constitutional crisis, when a group of Federalists thought that they could subvert the Constitution, steal the Constitution, as President Nixon wittingly or unwittingly would have had us accept and as I charge in a far more dangerous fashion, because of his popularity, because of his charm, unlike Richard Nixon who even his own supporters had some reluctance to accept full faith, he did not have that word they throw around, charisma of President Reagan. So President Reagan in my mind represents a far greater danger. And the actions that he has taken, some of them very little known, very little publicized, some of his domestic security, his national advisory, the National Security Advisories they call them, which have the force of an executive decree, are far-reaching, ominous, ominous indeed. But we should not be surprised, because in 1974 during that crisis we had even far more elaborate plans that the executive branch and officials within the executive branch had developed. And what are those? Those were to even suspend national elections if there was public turmoil and tumult. Well, who would take over, though? But what about today? What is very little noted that way but which, thanks to the congressional sense of responsibility, at least is being reviewed by a joint committee of the Congress. It remains to be seen whether it will end in total frustration as the first committee, the so-called Harris committee of the Senate, looking into what turned out to be the preliminaries leading to the so-called Watergate scandal, and what was that? Well, very similar to what the witnesses today, the highest ranking members of the executive branch of the Government are saying. Secretary Shultz, even lately the Attorney General, all picture an executive branch in somewhat of disarray. The Tower Commission before that dramatically pointed out, and this was an executive branch-selected commission, this was not a congressional commission, but let us go back to these troublesome days emerging in the late 1971 and then flowering into 1972.

In the autumn of 1971, Secretary of State Kissinger became obsessed with the notion that he could not trust anybody and that there were very, very serious leaks of documents or internal security matters.

The Joint Chiefs of Staff Chairman, Moore, distrusted Kissinger and considered him a tool of the Communist Russian regime.

So there was a tremendous spirit of distrust among the palace guard in the Nixon administration. Then the President decided to appoint what later was called the "plumbers" but which in reality was a group of individuals headed by a very young man by the name of Bennett who was not over 34 years of age, to try to plug the leaks. This is why they got the name plumbers. In fact, in a joking manner one day late in 1971 Bennett placed a little sign on his desk that said, "Plumbers. We stop leaks." It was soon after that that such individuals as E. Howard Hunt presumably retired from the CIA—though I doubt that—he was still pretty much on the payroll and James McCord also presumably ex-CIA, through their friendship with such people as Erlichmann and others in the Nixon administration joined that Commission or group to plug the leaks, to find out who was leaking and why.

□ 1455

Secretary Kissinger became so fearful that he would not trust even his own internal security but went to Naval Intelligence to get their help to give him security. In the meanwhile, this group attracted also one, E. Gordon Liddy. So they were meeting in the last month of 1971, in December, in a room in the Executive Building, trying to figure out what they could do about some of the individuals they were accusing of having leaked security information. One of them was the columnist, Jack Anderson.

So one night they met, and Liddy said, "We've got to do something about that guy. Now, I know the CIA has techniques. I know a doctor that has worked over there, and he has since retired, and he has means."

So they brought him over. But what Liddy had in mind was actually doing to an American what these other individuals in their CIA work offshore of the United States had been doing against foreign officials—that is, executive action, that is, bumping them off.

So when this doctor was informed, he said, "Hey, no, wait. I don't want to have anything to do with that. If what you want to do is discredit a guy like Anderson, yes, we've developed some substances that, if you can find a way to have Anderson ingest them, say half an hour before he starts a speech at the Press Club, I will guarantee you that in the middle of his speech he will be a blithering idiot, and that will discredit him."

Liddy said, "What's the matter with you? That's not enough. I want to get a profile on him. Let's get a psychological profile on him. Let's find out how he lives. Does he jog? Does he jog over there in Georgetown? Because if he does, we can always find a truck that will come around a corner at the right time."

Now, this was in the U.S.A., across the street from the White House, by an executive bunch hired by the President, who was just about as aware of that as Ronald Reagan is as to what is going on in the basement of the White House today, as revealed by everybody

from Colonel North to Poindexter and Meese and everybody else.

But what does that mean to us? It means that we allowed the creation of a runaway agency accountable to nobody, even its own director, because the office of the security of the CIA is free-wheeling. Nobody knows what is going on there, including the director of the CIA, even today, as well as in 1971.

That means that we are no better off, as far as being an open society, as far as ultimately being a free people, than some other countries that we look down on as having lost their democracy and having lost their freedoms. And the reason is simple. Nobody ever followed through on the violation, because shortly after that meeting the CIA detailed a dozen agents to have an around-the-clock surveillance of the columnist, Jack Anderson, at his home by CIA agents, from January until April 1972.

That is a breach of the law. It is a breach of the National Security of 1947 that set up the CIA. The Congress did not set up the CIA as an unaccountable agency, any more than it did the Federal Reserve Board, but they are now both totally out of control. They do not respond to anybody. They are not accountable to the Congress.

When the Boland amendment was placed in the law in 1984, did the CIA give a hoot about being prohibited from using funds? Of course not. Because the President merely increased his own executive discretionary fund 750 percent. Now, that is something that someday I hope those very, very diligent sleuths of budgetary accountability will follow through on. Forget about funds from the Iranian deal. I think this is more significant because this followed in the tradition of the constitutional crisis in 1974.

Now, it is true that the full dimensions of a constitutional crisis are not as dramatic as a battle in which you have somebody shooting at somebody and sombody bombarding back. Of course not. But from the standpoint of freedom, from the standpoint of constitutional integrity, it is an important war. In fact, it is a vital war, and I think that to the degree the American people are informed, we will be working against a backdrop of support and understanding. It is a failure of information. It is the ability of an administration such as this to have almost total control of the dissemination and the quality of dissemination of information, almost total, because for the first time that vast corporate upper structure of great wealth in our country is in total control of the decision-making processes.

Just today, before the Banking Committee's Subcommittee on Financial Institutions and Regulations, of which I am now a member, we had the outgoing chairman of the Federal Reserve Board, Mr. Volcker. He was asked to come before us by the chairman of the full committee to discuss the international financial banking situation, the question of the mega-financial institutions that are now transnational and multinational and that have no allegiance to any one nation. Some of them may have American citizenship, some may not.

But I asked one question. I said, "It has been estimated that every day there are about $200 billion of financial resources, chasing each other around the financial capitals of the world, London, New York, Paris, Bonn, Sydney, Australia, and Tokyo."

"Oh," he said, "there's a lot more than that."

I said, "All right. But this money, this vast resource of credit, what is it being used for? What is the reason for its traveling around? Is it to produce goods? Is it to enhance international commerce and barter? Is it going to produce goods ultimately?"

"No, it's purely speculative. These are dollars going after higher-priced or lower-priced dollars in order to be sold for higher prices that same day." But he said it was over that. I figured from the way he talked that $200 billion was a very conservative estimate.

I said, "Well, what can you do to control that?"

He hung his head, and he said, "The only thing is if we can just devise policies that will make it unprofitable."

Well, how can you do that when the same Federal Reserve Board has created the environment in our own country that has killed off hundreds of thousands of small businesses through usurious interest rates, extortionist interest rates? That is what attracts the foreign capital which has financed this. It has been the borrowed foreign money in this country which is fickle, which is very, very volatile, which is the one that precipitated the downfall of Continental Illinois just a few years ago and which cost the taxpayers so much. That is, they do not want to put it that way but it cost the Feds about $6 billion. We nationalized it. If this were a country like Mexico, we would say that Mexico nationalized it, but being that we do not believe in such things, we do not call it that, any more than we like to think we had temporarily a military junta here calling the shots. But as I said the other day, if we were to change the locale and say it was not our country but one of these other countries we do derogatorily look down on, a banana republic, we would just transfer the names around and say it was Colonel so-and-so and Admiral so-and-so and we would say, "Oh, that's just a military junta."

Well, that is what we have had here. But how can you have that under the Constitution? Because the Congress has been unwilling to even oversee its own laws such as the War Powers Limitation Act of 1974.

I have introduced three resolutions. The first was in 1982, in the case of the detachment of Marines sent to Beirut. And I kept asking for 14 months, "Mr. President, what is the military mission of the Marines?"

It also so happened that I was privy to the knowledge that the Joint Chiefs of Staff—these are our chief military experts in our country, the outstanding experts that we have provided for their military expertise—unanimously advised the President against that.

So my advice to the privileged orders is: Will you now at this point and juncture, for the safety of not rocking the boat, reconsider? When I introduced my impeachment resolution on last March 5, one of the Members said to me, "You know, I think you made a case there, but even if you can, HENRY, the man has just about another year in his term, a year and a half or two, and we can't afford to precipitate a constitutional crisis."

I just could not believe it. What does anybody think we are in the middle of? We are, in this month of August, which is a time when the climate is favorable, in only 1 month in the Nicaraguan area, when it is dry and it is convenient, preparing for an invasion, and just as surely as I am here talking today, I predict that the Persian Gulf crisis right now may or may not continue, but I think it will fade, but if it has not, it will be overshadowed by the developments next month, in August, in Nicaragua.

I sat here and listened to the debates the other day on this one bill that would provide recognition of the need to address from a humanitarian standpoint the great en-masse exodus of Central Americans for the first time in our history, en masse from El Salvador into the United States, and this has created or produced a nucleus of men of God, men of the cloth, who, out of their duties in their vocation, as called for, were crying out to recognize the need to give hospice and hospitality and refuge to some of these unfortunates whom I have seen with my own eyes and who live in pathetic circumstances in our midst, only to be jailed.

We have now in our prisons more than one religious American who is either a priest or a layman. We had one lady who was ordered to jail late last year because of her joinder in the so-called refugees or hospitality houses of a church in what we call the Valley of Texas, and she was pregnant. Nevertheless it took us 3½ months before we could persuade the judge and finally make everybody see that it was ridiculous to have a pregnant woman jailed on such a basis. It is really policy; it is nothing else. What

else is it? Since when is it right that we in America would allow our agents, our immigration agents and Customs agents, to invade a church as in Arizona and round up the priests and ministers and workers and try them and convict them and jail them because they were giving hospitality to Salvadoran refugees, some of whom had come up through Mexico and some of whom had died in the deserts of Arizona?

□ 1510

If we have already given up, and we have, for what, given the American birthright of freedom, of constitutionally based and defined freedom and rights. Even to those most powerless and impoverished, that has been the theory. My advice to the privileged orders would be just right along the lines of Joel Barlow's advice to those leaders, some of whom were beheaded after his essays, to look around and to just have compassionate, humanitarian consideration, nothing else.

As a result, we had what to this day is still recalled in history as the bloodiest of revolutions.

There is nothing that can be done to redress that movement of the seething millions south of the border which for the last 15 years or so now exceed our total population by almost 100 million—that did not used to be the case—but for which our leadership and unperceived, imperceptibly, and in a very, very dislocated fashion have failed to even analyze the history of those areas.

There is nothing we can do, and I believe nothing we should try to do that is going to impede the march of those downtrodden masses that have been submerged, subjected to the worst despots on the face of the Earth, the worst forces of tyranny for 300 to 400 years. It is no longer the same world.

Our misperceptions are such that even our own constitutional framework of reference has become distorted, so that if in our own home, we ignore the basic principles, how then can we recognize the dignity and the freedom that we ought to respect, and those willing to die for it, and we are not going to define the Nicaraguan revolution for them. They have died over many years. They have suffered; they have been tortured, and they have been imprisoned.

I never heard one voice arising from either the Congress or the Office of the Presidency about human rights charges, because those despotism charges were the handmaidens of our economic interests there.

Honduras, for instance, which we are occupying today against the will of the Honduran people, all we have to do is read what their people are writing since 1982.

They do not want us there militarily, but we are there because United Fruit has always been there. United Fruit has owned Honduras, the railroad, the housing, the jobs, everything. It is now known as Standard Brands. It is J. Peter Grace, the multibillionaire who has the conglomerate that now owns that. He has the biggest input with the Reagan administration as to defining the Latin American policy.

What would be his definition of a Communist down there? It would be interesting to know, but since when is it in our tradition to take sides with the despots merely because they say we are anti-Communists?

I am anti-Communist, and these people are a bunch of Communists; but you can say fine, so you have a bunch of moguls there that are preaching something called dialectic Marxist-Leninism; but the average citizen, those who fought the revolution, are still willing to fight the revolution, those that have been given guns to have in their household. Obviously, if that regime imposed, the very guns that regime has given these households to resist the common Yankee invasion, that is what they call it.

Their song is, as you see them march in green as I have seen them in newsreels, and I have not gone down there. I have not done the same thing as so many Members did during Vietnam. I was offered time after time a chance to go over to Vietnam.

I said that I would wait awhile. "Will you dress me up in fatigues and let me go up there with my constituents on Hamburger Hill? Of course, you will not."

That is where I would go if I was going to go there. In the meanwhile, I did not order them there, and if I had it in my power, just like right now, my critics say, "Well, what would you do in Nicaragua?"

I say, "What I would do if I had the power, I would pull out every single soldier we have down there all the way from Mexico on down to Honduras, down to Panama." Instead of an Army tank, we are going to send them a water tank. Instead of letting the Cubans send the doctors and the nurses and the teachers or the priests and missionaries who have been there, talk to them and see what they tell you.

Are they fearful of a Communist takeover? No, they are more fearful that we are about to commit the worst atrocities that we have been committing that forever and a day, and in the future, condemn our children, grandchildren, and great-grandchildren to a rebirth of the old feuds of the European continent which led to more war, more fratricide.

Actually if we have the wit and the will, and I have been asking my leaders since April 1, 1980, when Jimmy Carter was President, a fellow Democrat, and for those who say that I am partisan, this is what my advice was then: "Mr. President, my advice is that, use the last vestiges still remaining of the great American moral persuasive power with your colleagues in regional organizations such as the OAS, the Organization of American States, that we took the leadership in, for we still have a little bit left that we can use, and together can help resolve as we did in 1957."

President Eisenhower did not have any compunction in allowing his Secretary of State to go down to the same group, the Contradora group, to help resolve the border dispute that had been flaring up for decades between Nicaragua and Honduras.

Once we joined them, they made our American Secretary of State the head of the group; and we went to the World Court, and it was resolved.

There was peace between those two countries until Alexander Haig in his few months as Secretary of State introduced Argentinian troops, the first ones we put on Honduras, to try to destabilize the Sandinista junta, because that was the one that prevailed before the elections in Nicaragua of November 1984.

We got the then Argentinian military despots to lend us some of their troops. That is why they thought that they could go into the Falklands, and we would be on their side. What was the end result of that folly?

Less than 2 years later, those same military that had been considered by Mr. Haig the most anti-Castro around were in Havana toasting Fidel Castro. Does that mean he is a great leader, a great diplomat?

No, it means that we have fouled up through misperception, through prejudice, through ignorance of history and culture what could be ours as a natural leadership, for I have maintained all along that there is a parallel development.

The whole story about the flag follows trade and vice versa, of course, between 1975 and 1980 or thereabouts, the American business investment in Latin America dropped from 37, 38 percent to about 17 percent. We abandoned that area. We turned our backs.

We are reaping a whirlwind and the exportation, the injustice that we have permitted has given rise to the fulfillment of the very fear; that is, communism.

Communism, the only time it takes hold is when the processes are blocked. Social justice is not afforded, and the cry can be made just as much as it was in Germany at the time of the Weimar Republic, and I remember seeing pictures of emaciated German mothers holding a pail out to receive milk in a dole line for their children.

I would see men with their heads resting on an iron rail of a big build-

ing, and this was a homeless shelter for the German unemployed man.

Hitler came and promised and said, "I will redeem you."

If the Devil had come with pitchforks and horns and tails and said he would do this, they would have followed the Devil. We forget these things, so whether it is communism, Nazism or democracy for that matter, the people know the difference between one who is for them and one who is not.

There is nothing we can do by trying to find a military solution. One of the latest articles in the New York Times which I would like to offer for the RECORD, and another one in a French newspaper which I offer the translation of that for the RECORD, in which the report on El Salvador is as ominous as anything.

The articles referred to follow:

[From the New York Times, July 26, 1987]

REBELS GAIN WHILE DUARTE FLOUNDERS

(By James LeMoyne)

SAN SALVADOR.—The Salvadoran guerrillas are practicing what they call "prolonged popular war" with a vengence, as the country slides into its eighth year of civil conflict.

In a tactical shift, the Marxist-led rebels of the Farabundo Marti National Liberation Front are rebuilding their political and military presence in the capital, moving to exploit Government failures and severe economic strain.

The Government of President José Napoleón Duarte, which had the rebels on the run two years ago, has now given them room to gain. It has failed to offer social and economic programs that work and, after three years of formal electoral democracy, the average Salvadoran feels worse off. "This Government does not realize that it is fighting a revolutionary war," a senior military officer said. "It has failed to apply the social and economic programs the country needs and it is losing its social base among workers and peasants."

Because Salvadorans are weary of killing and war, the rebels may well fail to find new supporters among disgruntled urban workers and slum dwellers. But they clearly intend to try, saying they have returned to San Salvador to sharpen political and economic tensions. According to captured rebel documents, the guerrillas hope to spark a general strike before the American and Salvadoran elections in 1988 and 1989.

Such a strike seems highly unlikely but the documents, which both rebel and diplomatic sources say are authentic, outline step by step how the guerrillas intend to pursue it. The strategy calls for the formation of front groups in labor unions, student organizations and human rights committees. These groups would serve as a base to seek wider support, while they hold strikes, sit-ins, embassy occupations and the street demonstrations that are already under way. At the same time, the documents show, rebel military cells are infiltrating the capital to raise "the level of violence" and further weaken the Government. Several bombings and an effective rebel-imposed ban on public transport two weeks ago attest to the rebel presence.

They have been assisted by the lifting of the longstanding state of siege that permitted the police to detain suspects for two weeks and prohibited street demonstrations. Suspected rebels can now be detained for only three days, after which they are usually released. Government officials say the civil courts are afraid to convict suspected guerrillas, who are capable of retribution.

Nearly every week 200 to 500 rebel supporters demonstrate in the capital. In two recent incidents, the police wounded demonstrators wielding nail-studded clubs as they tried to break through police lines. The police also opened fire when demonstrators began destroying Government vehicles. But the authorities' overall response has been cautious.

It is highly debatable whether the rebels' new tactics can be successful. People resent bans on public transport and attacks in the largely tranquil capital. They also fear a possible return of Government repression. Several bystanders last week criticized club-carrying students for being violent. The size of demonstrations is diminishing, not growing.

But unemployment and inflation are rising and the Government is widely seen by Salvadorans as incompetent and corrupt. At a time when Mr. Duarte's popularity seems to be lower than ever, the rebels are making their political presence felt. They have spray-painted most of the city's walls and the American Embassy with slogans. And in poorer neighborhoods, residents showed greater sympathy for demonstrators.

For their part, the guerrillas say they had no alternative but to return to the streets after four years in which, for most city dwellers, they had become little more than a faceless military force somewhere in the distant hills. They are trying to recover the political base they had in 1980 before the Government cracked down on them, a probably unattainable goal.

The rebels have also been working for two years to perfect a new military strategy. They infiltrate army units and then launch precise and devastating attacks by specially trained forces, backed by highly accurate mortar fire. Military officials say they believe the army is now thoroughly infiltrated by the rebels.

Meanwhile, the guerrillas have continued to use land mines and, more recently, remote-controlled mines to great effect. According to captured guerrilla documents and rebel deserters, most of the top commanders have been trained in Cuba and, in several cases, Vietnam. After eight years of polishing the techniques of revolutionary war, they are unquestionably the most able practitioners of it in Latin America. With probably no more than 4,000 armed rebels and perhaps 30,000 committed supporters, they have been able to cripple this small country of more than six million people.

While they are effective in battle, the rebels have yet to show that they can be more than spoilers. But given Government incompetence and their will to fight, it would be a mistake to underestimate their capacity to grow stronger.

[From World Press Review, August 1987]

REMEMBER EL SALVADOR? THE ARMY IS BECOMING THE NEW OLIGARCHY

(By Rene Backmann)

Fingers on the triggers, their M-16s trained on the houses of the main street, half a dozen troops of army detachment No. 5, in green camouflage fatigues and wide-brim bush hats, have just entered the town of Tenancingo. Bent under their packs, they inch forward along the walls, keeping an eye on the closed windows and doors.

Tenancingo, 30 miles from the capital city of San Salvador, was to be a model village, an island of peace and tolerance, a spot of hope in the heart of this country ravaged by civil war for eight years. Twice occupied by the guerrillas, in June and September, 1983, twice retaken by the army after savage shellings, the village, once a prosperous farming town of 3,000 people, has paid a heavy tribute to war.

Along the main street, large splotches of fresh cement on the pink and green houses, and a face glimpsed here and there among the shadows, confirm that there is life again in Tenancingo. But the guerrillas and soldiers play cat and mouse in the village. I arrived in the early afternoon. The muchachos had come through during the night, and the army came in on my heels. For more than a year, Tenancingo has been muddling through, between fear and hope, as if peace could not quite take root in this blood-soaked soil.

In El Salvador, the worst almost always comes true. In eight years of war between the army and the 6,000 guerillas, this country of 6 million people has suffered 60,000 dead, 6,000 missing, and thousands mutilated. A million Salvadorans have chosen exile, and 500,000 have fled from the strife into the shantytowns of San Salvador. Despite the good will proclaimed by Christian Democratic President José Napoleón Duarte, who has spent millions of dollars and a wealth of eloquence on improving the disastrous image of El Salvador, democracy remains a dangerous dream, and war remains the reality.

The period of large-scale massacres, the matanzas of the early 1980s when more than 40,000 were killed in three years, is now over. There is still killing, torturing, and kidnapping, but more selectively. The death squads, which did the army's dirty work anonymously, have not disappeared, but seem to prefer intimidation to executions for the time being, although from time to time there is a bloody blunder.

A few months ago, garbage collectors discovered a garbage can filled with human limbs, suggesting the existence in the neighborhood of an underground detention and torture center. On April 14, a student leader was executed in broad daylight on the campus of the University of Santa Ana. Two weeks later, the tortured and decapitated body of Antonio Jesús Hernández Martinez, secretary-general of the National Association of Farm Workers, was found at the edge of a river near San Luis de la Reina.

"Durate says that we are a democracy and that we must unite against guerrilla terrorism, but he has not even been able to arrest and bring to justice the murderers of Monsignor [Archbishop] Romero, nor those of the American nuns, even though many people know who they are," charges Maria Rosana Bonilla, leader of the Committee of Mothers of Missing Persons [Comadres], which is to El Salvador what the Mothers of the Plaza de Mayo are to Argentina.

"There are underground prisons," she says. "We want to know if our children are in them. They were kidnapped alive; we want them back alive. But Durate does not even want to listen to us. He has never consented to receive us." "To accuse Durate of having accomplished nothing would be unfair." says a foreign diplomat. "He has set in motion agrarian and foreign trade reforms that have earned him the image of a Marxist among the right-wing coffee planters. But he has not gone very far. He is virtually in the hands of the army."

"Formerly, the army obeyed the oligarchy," observes Father Ignatius Illacurai, the Jesuit rector of Central American University. "Today, it obeys the American embassy, and it is itself becoming the new oligarchy," he adds. The rich have stayed rich, but the 14 families who ran the country 10 years ago—the Hills, the Regalados, the Deiningers, the Vilanovas—now number 200. The secret of this metamorphosis: a flood of U.S. aid dollars.

After the Sandinista victory in Nicaragua, the Pentagon decided that El Salvador was the last line of defense in Central America. Washington has since poured $2 billion in economic and military aid into this tiny country.

The Salvadoran army, which in 10 years has grown from 16,000 to 60,000 men, receives $500,000 a day. The share of defense in the national budget was 19 percent in 1983. Today it is 30 percent. The little coup machine, reorganized and trained by 300 U.S. advisers, has become a well-equipped, well-armed anti-guerrilla force boasting 200 light tanks and 70 combat helicopters. It lacks only conviction.

But how does one make raging Rambos out of illiterate 16-year-old kids wrenched from their villages or shantytowns, rounded up by the police from the exits of stadiums and movie theaters, and drafted into combat against other kids as poor as they are? This is a problem the U.S. advisers have not resolved. The Salvadoran body politic is not even aware of it.

The capital, where California-style country houses stand beside vast slums, can give one illusions. The rubble of the 1986 earthquake has still not been cleared, and buildings shaken by the tremor still stand askew here and there throughout the town and sometimes collapse on unfortunate squatters. But the BMWs and the Mercedes have never been more numerous. The chic restaurants and nightclubs of the Zona Rosa are filled. The movie theaters are showing "Platoon," "Under Fire," "Delta Force," and "The Executioner."

While guerrillas expand their attacks on military positions and fire mortar shells and anti-tank rockets on the army headquarters in downtown San Salvador, the city's upper crust, high on violence and money and dulled by a servile press and television, dance the cha-cha and make small talk. For these wet-behind-the-ears capitalists—who dream of purifying the local white race by shedding the Indian influence, who admire Chilean dictator Augusto Pinochet, and who see Corazon Aquino as a communist—the weak José Napoléon Duarte, with his timid reformist notions, has become an embarrassment.

"He is like a watermelon," says Maj. Roberto D'Aubuisson, one of the bosses of the death squads. "On the outside, green, the color of the Christian Democrats; but on the inside, red."

The Association of Coffee Planters, one of the most powerful employers' groups, is calling upon the army to overthrow its head of state and set up a governmental junta, Chilean-style. It suggests reactivating the paramilitary organization Orden, which was responsible for some of the massacres committed between 1980 and 1983. In the past three years, Duarte has had to cope with 24 attempted coups. And twice it has proved necessary for the U.S. ambassador, Edwin Corr, to intercede with the military in order to get Duarte out of trouble.

"For the last five or six years the Americans have decided virtually everything," says an underground guerrilla leader. "Still, it is true that El Salvador is not in Africa but in Central America. We will get nowhere if we do not admit that the U.S. is the dominant power in this region. We are ready to talk with everyone. What is impossible with Reagan may be possible tomorrow with the Democrats."

There are pragmatists among the guerrillas. There are pragmatists, too, among the army officers in the field, far from the command posts, who slosh through the social reality of the country.

"In this war there can be no strictly military solution, because the problem is not of a military nature," says Col. Mauricio Vargas, who commands the 1,800 men of the Fourth Army Detachment. In the provinces of Morazán and Chalatenango, the people live day and night on war footing. Helicopters with American pilots swirl over the rooftops, machine guns aimed at the ground, then suddenly surge toward the hills. Lines of armored vehicles and sections of new recruits maneuver under the eye of a U.S. adviser.

"The politicians have to become aware of the realities," adds Col. Vargas, a short, stocky man dressed in a carefully ironed olive-drab uniform. On the bookshelf behind him stands a five-volume work, "The Theory of Low-Intensity War."

"In this country," he says, "three-quarters of the peasants are landless. An agrarian reform is indispensible. There are people in power who will neither leave nor share, but they are going to have to choose. All of these sumptuous mansions, swimming pools, luxury cars, jewel-bedecked women, all of the pleasure is indecent when so many people lack the means to survive.

"It is with all of that in mind that I am making war here. If I wanted to, I could stage a destruction operation in the Perquin sector, where there are terrorists, and kill 2,000 people. That is not my method. I prefer to reopen the schools that have been closed, rebuild power lines, set up medical clinics. That is how I regained control of this region. I have protected myself against a surprise attack like that staged by the guerrillas against the El Paraíso barracks on March 31 that took 70 lives.'"

Five days after this conversation, more than 300 guerrillas staged a surprise nighttime attack on the San Francisco Gotera barracks. The toll: 36 dead and 40 wounded among the soldiers, seven dead among the muchachos.

Here is Salvador. Every one of the Members says we put in a man there that is a great leader and democrat. We are not any closer to a solution after 4 billion dollars' worth of military and other aid and imposing our regime there. We are no closer to a solution than we were in 1981 when Alexander Haig drew the line in El Salvador, the smallest country of all.

Here we are talking about Nicaragua. We are ready to invade, no question in my mind. The course has been set.

The President has too much at stake to reverse himself. He has already made speeches in which he has said, I will not let my successor inherit Nicaragua.

What has been his doctrine? Has he ever tried diplomatic approaches? Never once. It has been strictly military.

We are not shooting ourselves into the hearts of the Latin-American people. It is just that simple.

Suppose even the Contras, which they cannot, and they will start moving pretty soon, I predict, and suppose they do physically take over. Will they govern Nicaragua? Never, never.

There will be guerrilla warfare not confined to Nicaragua, but all up and down those extensions. In the meanwhile, the other erstwhile friends of ours in Latin America are scared, that if this is the way we approach the matter, sooner or later they will be victimized by our intrusion, so we have lost allies that have been with us in time of war, World War II.

They were with us, because Franklin Roosevelt developed a Good Neighbor Policy to offset the Calvin Coolidge action of sending the Marines to Nicaragua, keeping them there 13 years, imposing the Somoza regime.

Of course, we have to anwer for our collective sins, just like we answer for our individual sins.

Who would have told Calvin Coolidge in 1929 that some 50 years later, he would have such an awesome development that could not be put down by a detachment of marines?

□ 1525

Nobody, but it is inevitable, because as we are individuals, collectively we must answer. I say there may still be time, but I do not think so, becuase I am convinced that the President is irreversibly dedicated to a course of unilateral military intervention, whether it takes our troops or not. In fact, colleagues of mine and the President himself has said, "You give us the money for the Contras, because if you don't, we're going to have to use our troops."

My contention is that no matter how much money we give the Contras, it will not be until we have American troops in there that we will actually occupy Nicaragua, but then we will have to sit there. We will have to occupy it. We will have to have our troops facing guerrilla warfare snipers and everything else and a tide of hatred. Why?

How can we constructively do anything that way, when we could win everything through other means, cooperatively, through corporate addressing it. Five of those nations have been offering that cooperation for 5 years. We have undermined every effort they have made. Every time they had reached the point where they thought they have an understanding, it was our Secretary of State that pulled the rug from underneath the group.

I say let us reaffirm the Constitution. Let us be loyal to the Constitu-

tion and the American traditions and ideals. This is what the world wants.

The average citizen south of the border, from Mexico on down, still has a residual aspiration, looks to the United States. It is the land of hope. It is the land of freedom. They cannot reconcile why we would align ourselves with those who would hold them down constantly.

We are not going to be able to win any more than we did in Vietnam, and more than we did in Korea. We still have 45,000 troops in Korea. We have 300,000 in Germany.

We are now prepared, in full violation of the War Powers Limitation Act, to patrol the Persian Gulf, fully armed. The Secretary of State has declared that we are on "ready 3 state." That means that we are ready for action. He has also said we are prepared to attack any missile base Iran puts up.

Why should we do that? In the case of Honduras, if we are going to want our boys to go die for Chiquita Banana, that is fine, but I want to know how many of my colleagues who are all out for intervention are willing to send their sons to die for Chiquita Banana?

In the case of the Persian Gulf, it is the oil that belongs not to Kuwait, but belongs to British Petroleum and Standard Oil of California. That is what our sailors will be dying to protect.

Kuwait has nationalized its oil production for years, but they do not market it and they do not transport it. That is what we are protecting.

And who are the merchants making money? Socal and British Petroleum.

And yet under what circumstances, what are the rules of engagement? It is folly and an act of injustice to fire the captain of the *Stark* and then as of yesterday two of the officers forced to resign. Why? They are scapegoats. They were on the ship. They have the rules of engagement that they can change only on high command orders. There was not anything they could do. The rules of engagement did not call for them to fire back or do anything else.

What are the rules of engagement now? I asked the same question of the executive branch. What is the military mission of our warships in the Persian Gulf now? There is a war raging there, a bloody, cruel war between an Arabic nation and a non-Arabic nation.

We are now involved, as we were when we sent the marines and for 14 months I tried to warn that they could not be peacekeepers. In the first place, marines are not diplomats. They are not politicians. They are warriors. They were put in a militarily untenable situation.

Mr. Speaker, I just say that the catastrophe resulting in Beirut is clear and ample proof of the bankruptcy of the administration's policy. The catastrophe to come and to continue in Central America is clear proof that those policies are bankrupt and they are bankrupt in direct proportion as we have strayed from our constitutional provisions and doctrines and precedents.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ROWLAND of Connecticut (at the request of Mr. MICHEL), until 1:30 p.m. today, on account of attending a funeral.

Mr. HAMMERSCHMIDT (at the request of Mr. MICHEL), for today, on account of a death in the family.

Mrs. JOHNSON of Connecticut (at the request of Mr. MICHEL), until 1:30 p.m. today, on account of attending a funeral.

Mr. DANIEL (at the request of Mr. FOLEY), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SLAUGHTER of Virginia) to revise and extend their remarks and include extraneous material:)

Mr. GEKAS, for 5 minutes, today.

Mr. SOLOMON, for 5 minutes, today.

Mr. SENSENBRENNER, for 30 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Ms. KAPTUR, for 60 minutes, on August 3.

Mr. JONTZ, for 5 minutes, on August 5.

Mr. HAYES of Illinois, for 5 minutes, on August 5.

Mr. OWENS of New York, for 5 minutes, on August 5.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. SLAUGHTER of Virginia) and to include extraneous matter:)

Mr. ARCHER.

Mr. DANNEMEYER.

Mr. SOLOMON.

Ms. SNOWE.

Mr. LEWIS of California.

Mr. GOODLING.

Mr. MICHEL in two instances.

Mr. GEKAS.

Mr. LUNGREN.

Mr. MILLER of Ohio.

Mr. JEFFORDS.

Miss SCHNEIDER.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. BATES.

Mr. AUCOIN.

Mr. FRANK.

Mr. LANTOS in two instances.

Mr. DARDEN.

Mr. LAFALCE.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found a truly enrolled bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3022. An act to provide for a temporary extension of the public debt limit.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. Res. 151. Joint resolution to designate August 1, 1987, as "Helsinki Human Rights Day."

BILL PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following date present to the President, for his approval, a bill of the House of the following title:

On July 29, 1987:

H.R. 3022. An act to provide for a temporary extension of the public debt limit.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 30 minutes p.m.), under its previous order, the House adjourned until Monday, August 3, 1987, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1875. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-67, "Soil and Water Conservation District Reestablishment Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1876. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-70, "Closing of a Portion of a Public Alley in Square 431, S.O. 86-203, Act of 1987," and report, pursuant to D.C.

Code section 1-233(c)(1); to the Committee on the District of Columbia.

1877. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-69, "Closing of Public Alleys in Square 66, S.O. 86-175, Act of 1987," report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1878. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-66, "Litter Control Expansion Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1879. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-68, "Helicopter Landing Pad Public Nuisance Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1880. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-65, "D.C. Taxicab Commission Fund Amendment Temporary Act of 1987," pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1881. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-64, "Precinct Boundary Changes Approval and Procedural Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1882. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-63, "D.C. Nursing Shortage Study Commission Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1883. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-59, "Penalty for Prostitution Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1884. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-60, "Nurses Training Corps Establishment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1885. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-61, "Citizens Energy Advisory Committee Extension Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1886. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-62, "Pedestrian Protection Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

1887. A letter from the Secretary of Education, transmitting a copy of final regulations—Drug-Free Schools and Communities Program—training and demonstration grants to institutions of higher education, and Federal Activities Grants Program—general provisions; training and demonstration grants to institutions of higher education; and Federal Activities Grants Program, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

1888. A letter from the Director, Office of Management Analysis, Department of the Interior, transmitting the Department's notice of a proposed new Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

1889. A letter from the Acting Assistant Administrator for Administration and Resources Management, Environmental Protection Agency, transmitting the Agency's notice of a proposed new Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

1890. A letter from the Secretary of the Interior, transmitting the Secretary's notice of an application for a loan by the Montana Department of Natural Resources and Conservation, State of Montana, Middle Creek Dam Rehabilitation Project in the amount of $3,121,925, pursuant to 43 U.S.C. 4221; to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ST GERMAIN: Committee on Banking, Finance and Urban Affairs. H.R. 2686. A bill to amend the Pubic Works and Economic Development Act of 1965 and the Appalachian Regional Development Act of 1965; with amendments (Rept. 100-237, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. DYMALLY: Committee on Post Office and Civil Services. H.R. 2309. A bill to amend the Christopher Columbus Quincentenary Jubilee Act; with amendments (Rept. 100-254). Referred to the Committee of the Whole House on the State of the Union.

Mr. PEPPER: Committee on Rules. House Resolution 236. Resolution waiving certain points of order against the conference report on the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, and for other purposes, and against the consideration of such conference report (Rept. 100-255). Referred to the House Calendar.

Mr. NATCHER: Committee on Appropriations. H.R. 3058. A bill making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1988, and for other purposes (Rept. 100-256). Referred to the Committee of the Whole House on the State of the Union.

Mr. MONTGOMERY: Committee on Veterans' Affairs. H.R. 2672. A bill to amend title 38, United States Code, for the purpose of improving veterans' housing programs, with an amendment (Rept. 100-257). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RIDGE:

H.R. 3057. A bill to reestablish food bank special nutrition projects, to establish food bank demonstration projects, and for other purposes; to the Committee on Agriculture.

By Mr. NATCHER:

H.R. 3058. A bill making apropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1988, and for other purposes.

By Mr. ARCHER:

H.R. 3059. A bill to extend the filing period for reliquidation of certain imports; to the Committee on Ways and Means.

By Mr. AUCOIN:

H.R. 3060. A bill to establish a reservation for the Confederated Tribes of the Grand Ronde community of Oregon, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 3061: A bill to establish a reservation for the Confederated Tribes of Grand Ronde community of Oregon, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. BATES:

H.R. 3062. A bill to amend the Controlled Substances Act to regulate transactions involving ephedrine and certain other substances; jointly, to the Committees on Energy and Commerce and the Judiciary.

By Mr. CARPER (for himself and Mr. WORTLEY):

H.R. 3063. A bill to enhance the competitiveness of commercial banks and bank holding companies; to the Committee on Banking, Finance and Urban Affairs.

By Mr. HENRY:

H.R. 3064. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the interest on certain savings bonds used to pay college tuition expenses; to the Committee on Ways and Means.

By Mr. LAFALCE (for himself, Mr. MCDADE, Mr. JENKINS, and Mr. DAUB):

H.R. 3065. A bill to increase the amount of deduction for health insurance costs of self-employed individuals; to the Committee on Ways and Means.

By Mr. MCCOLLUM (for himself, Mr. CHENEY, Mr. BROOMFIELD, Mr. HYDE, Mr. COURTER, and Mr. DEWINE):

H.R. 3066. A bill to amend title 18, United States Code, to make the knowing disclosure of classified information by Federal officers and employees a criminal offense; to the Committee on the Judiciary.

By Mr. REGULA:

H.R. 3067. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to the treatment of certain terminated plans; jointly, to the Committees on the Judiciary and Education and Labor.

By Mr. SKELTON:

H.R. 3068. A bill to amend title 32, United States Code, to authorize Federal support of State defense forces; to the Committee on Armed Services.

By Mr. STANGELAND (for himself, Mr. ROBERTS, Mr. DE LUGO, Mr. LIGHTFOOT, Mr. UPTON, and Mr. WEBER):

H.R. 3069. A bill to minimize the impact of agricultural nitrogen on ground water and surface water quality by establishing a nationwide educational program aimed at the American farmer, urging adoption of agricultural best management practices and to amend section 319 of the Clean Water Act;

jointly, to the Committees on Agriculture and Public Works and Transportation.

By Mr. SYNAR (for himself, Mr. SKELTON, Mr. CLINGER, and Mr. WHEAT):

H.R. 3070. A bill to amend the Toxic Substances Control Act to require persons handling polychlorinated biphenyls to comply with the manifest and financial responsibility requirements of the Solid Waste Disposal Act and to require persons carrying out certain intermediate activities with respect to polychlorinated biphenyls to obtain approval from the Environmental Protection Agency; to the Committee on Energy and Commerce.

By Mr. WAXMAN (for himself, Mr. JEFFORDS, Mr. ASPIN, Mr. BERMAN, Mrs. BOXER, Mrs. BYRON, Mr. CARDIN, Mr. COELHO, Mrs. COLLINS, Mr. DINGELL, Mr. DIXON, Mr. DYMALLY, Mr. ECKART, Mr. EDWARDS of California, Mr. FAZIO, Mr. FOLEY, Mr. FRANK, Mr. GARCIA, Mr. GILMAN, Mr. GREEN, Mr. GUARINI, Mr. HAWKINS, Mr. HOYER, Mr. LELAND, Mr. LEVINE of California, Mr. LOWRY of Washington, Mr. MARKEY, Mr. MILLER, of Washington, Mr. MINETA, Mr. MONTGOMERY, Mr. OWENS of New York, Mr. PANETTA, Ms. PELOSI, Mr. RICHARDSON, Mr. ROWLAND of Georgia, Mr. ROYBAL, Mr. SCHEUER, Mrs. SCHROEDER, Mr. SIKORSKI, Mr. STUDDS, Mr. SWIFT, Mr. SYNAR, and Mr. WEISS):

H.R. 3071. A bill to amend the Public Health Service Act to establish a grant program to provide for counseling and testing services relating to acquired immune deficiency syndrome and to establish certain prohibitions for the purpose of protecting individuals with acquired immune deficiency syndrome or related conditions; jointly, to the Committees on Energy and Commerce, the Judiciary, and Education and Labor.

By Mrs. JOHNSON of Connecticut (for herself, Mr. BLILEY, Mr. BOLAND, Mr. OLIN, Mr. ST GERMAIN, Mr. MONTGOMERY, Mr. MRAZEK, Mrs. COLLINS, Mr. WORTLEY, Mr. LAGOMARSINO, Mr. CARR, Mr. BONER of Tennessee, Mr. DAUB, Mr. OBERSTAR, Mr. LEVIN of Michigan, Mrs. VUCANOVICH, Mr. DE LA GARZA, Mr. ANDERSON, Mr. SMITH of Florida, Mr. KASICH, Mr. ESPY, Mr. GUNDERSON, Mr. VOLKMER, Mr. ROE, Mrs. ROUKEMA, Mr. CROCKETT, Mr. NIELSON of Utah, Mr. CONTE, Mr. LANCASTER, Mr. GRAY of Illinois, Mr. SCHEUER, Mrs. KENNELLY, Mr. BEVILL, Mrs. BOXER, Mr. YOUNG of Alaska, Mr. DWYER of New Jersey, Mr. LEWIS of Georgia, Mr. GREEN, Mr. SAVAGE, Mr. DICKINSON, Mr. BROOKS, Mr. OWENS of New York, Mr. LIPINSKI, Mr. DOWDY of Mississippi, Mr. FROST, Mr. WEISS, Mr. FISH, Mr. HEFNER, Mr. DORNAN of California, Mr. MCDADE, Mr. WATKINS, Mr. COOPER, Mr. HENRY, Mr. ROBINSON, Mrs. PATTERSON, Mr. MARTINEZ, Mr. COATS, Mr. FAUNTROY, Mr. KOSTMAYER, Mr. GUARINI, Mr. PURSELL, Mr. STUMP, Mr. JENKINS, Ms. SLAUGHTER of New York, Mr. MAZZOLI, Mr. TRAFICANT, Ms. OAKAR, Mr. WAXMAN, Mr. HUTTO, Mr. AKAKA, Mr. ANTHONY, Mr. SCHULZE, Mr. SMITH of New Jersey, Mr. SHUMWAY, Mrs. BENTLEY, Mr. BERMAN, Mr. ROWLAND of Georgia, Mr. LEHMAN of Florida, Mr. DUNCAN, Mr. BARNARD, Mr. TRAXLER, Mr. FUSTER, Mr. MURPHY, Mr. TOWNS, Mr. BOUCHER, Mr. JONES of North Carolina, Mr. HOWARD, Mr. YATRON, Mr. SABO, Mr. RHODES, Mr. HATCHER, Mr. DYMALLY, Mr. GEKAS, Ms. KAPTUR, Mrs. LLOYD, Mr. COURTER, Mr. PASHAYAN, Mr. TAUKE, Mr. HUGHES, Mr. MATSUI, Mr. KEMP, Mr. DONNELLY, Mr. PORTER, Mr. MOAKLEY, Mr. WILLIAMS, Mr. ECKART, Mr. BLAZ, Mr. DE LUGO, Mr. BENNETT, Mr. HASTERT, Mr. WOLF, Mr. DANIEL, Mr. FORD of Michigan, Mr. BORSKI, Mr. DEFAZIO, Mr. SUNIA, Mr. CHANDLER, Mr. HARRIS, Mr. LEWIS of Florida, Mr. MCEWEN, Mr. COLEMAN of Missouri, Mr. RAVENEL, Mr. TORRICELLI, Mr. WALGREN, Mr. WELDON, Mr. TALLON, Mr. ERDREICH, Mr. CHAPMAN, Mr. VENTO, Mr. SOLOMON, Mr. SMITH of Iowa, Mr. HAMMERSCHMIDT, Mr. RICHARDSON, Mr. GRANDY, Mr. CLAY, Mr. BRENNAN, Mr. EARLY, Mr. GARCIA, Mr. LUNGREN, Mr. LEWIS of California, Mr. BRYANT, Mr. DEWINE, Mr. CLINGER, Mr. MCMILLEN of Maryland, Mr. VALENTINE, Mr. JEFFORDS, Mr. MANTON, Mr. HILER, Mr. LELAND, Mr. HERTEL, Mr. CARDIN, Mr. HALL of Ohio, Mr. ROEMER, Mr. KILDEE, Mr. LEACH of Iowa, Mr. TAUZIN, Mr. SPENCE, Mr. BAKER, Mr. TAYLOR, Mr. LIVINGSTON, Mr. DERRICK, Mr. HOYER, Mr. MORRISON of Connecticut, Mr. HOLLOWAY, Mr. ATKINS, Mr. GREGG, Mr. MADIGAN, Mr. FLORIO, Mr. FLAKE, Mr. BUNNING, Mr. PARRIS, Mr. MFUME, Mr. FASCELL, Mrs. MORELLA, Mr. IRELAND, Mr. UDALL, Mr. NELSON of Florida, Mr. HUBBARD, Mr. HAYES of Louisiana, Mr. VANDER JAGT, Mr. VISCLOSKY, Mr. COUGHLIN, Mr. FAZIO, Mr. LIGHTFOOT, Mr. GEJDENSON, Mr. NEAL, Mr. BARTLETT, Mr. BOSCO, Mr. BURTON of Indiana, Mr. DARDEN, Mr. CONYERS, Mrs. BYRON, Mr. DIXON, Mr. CARPER, Mr. SHAW, Mr. ROBERTS, Mr. FRANK, Mr. GILMAN, Mr. LANTOS, Mr. MOORHEAD, Mr. MCCOLLUM, Mr. RINALDO, Mr. SKELTON, Mr. SMITH of New Hampshire, Mr. SPRATT, Mr. STARK, Mr. THOMAS of Georgia, Mr. WILSON, Mr. YATES, Mr. GRAY of Pennsylvania, Mr. HUCKABY, Mr. MCGRATH, Mr. SCHUETTE, Mr. QUILLEN, Mr. FOGLIETTA, Mr. ROWLAND of Connecticut, Mr. LEVINE of California, Mr. PEPPER, Mr. LAFALCE, Mr. LENT, Mr. KANJORSKI, Mr. LEHMAN of California, and Mr. WYLIE):

H.J. Res. 346. Joint resolution designating the month of October 1987 as "Lupus Awareness Month"; to the Committee on Post Office and Civil Service.

By Mr. LEVINE of California (for himself, Mr. WOLPE, Mr. SOLARZ, and Mr. LEACH of Iowa):

H. Con. Res. 171. Concurrent resolution expressing the sense of the Congress on future United States assistance to Pakistan; to the Committee on Foreign Affairs.

By Mr. ROSTENKOWSKI:

H. Res. 235. Resolution returning to the Senate the bill S. 829; considered and agreed to.

By Mr. PEPPER:

H. Res. 236. Resolution waiving certain points of order against the conference report on the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, and against the consideration of such conference report; House Calendar No. 66; House Rept. No. 100-255.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 653: Mr. KOLTER.

H.R. 920: Mr. FRANK.

H.R. 1095: Mr. SCHAEFER.

H.R. 1122: Mr. DURBIN, Mr. DONNELLY, Mr. RODINO, Mr. GEJDENSON, Mr. SCHUMER, Mr. TORRICELLI, Mrs. BYRON, Mr. GARCIA, Mr. MOAKLEY, Mr. SWIFT, and Mr. SUNIA.

H.R. 1349: Mr. HENRY, Mr. FAZIO, Mrs. BENTLEY, Mr. BIAGGI, Mr. ACKERMAN, Mr. FLORIO, Mr. FAWELL, Mr. LEVIN of Michigan, and Mr. INHOFE.

H.R. 1356: Mr. KOLTER.

H.R. 1371: Mr. KOLTER.

H.R. 1536: Mr. LEATH of Texas.

H.R. 1597: Mrs. BENTLEY, Mr. HAWKINS, Mr. HORTON, Mr. SMITH of New Hampshire, Mr. HUGHES, and Mr. MARTINEZ.

H.R. 1635: Mr. MANTON, Mr. DELLUMS, Mr. MILLER of Washington, Mr. SYNAR, and Ms. PELOSI.

H.R. 1707: Mr. TORRICELLI, Mrs. BYRON, Mr. SCHAEFER, Mr. LEWIS of California, Mr. PANETTA, Ms. SLAUGHTER of New York, Mr. DERRICK, and Mr. DYMALLY.

H.R. 1726: Mr. SCHUETTE.

H.R. 1786: Mr. MACKAY and Mr. GUNDERSON.

H.R. 1794: Mr. RICHARDSON.

H.R. 1974: Mr. KOLBE.

H.R. 2032: Mr. KOLTER.

H.R. 2062: Mr. KOLTER.

H.R. 2067: Mr. WHITTEN, Mr. TAYLOR, Mr. EMERSON, Mr. MORRISON of Washington, Mr. HAMILTON, Mr. WOLPE, Mr. MINETA, Mr. GORDON, Mr. HORTON, Mr. WORTLEY, Mr. GINGRICH, Mr. WILSON, Mr. WYDEN, Mr. GRANT, Mr. YOUNG of Florida, Mr. FROST, Mr. CLARKE, Mr. LAGOMARSINO, Mr. FASCELL, Mr. NATCHER, Mr. IRELAND, Mr. LEACH of Iowa, Mr. MARTINEZ, Mr. LANCASTER, Mrs. BENTLEY, Mr. LANTOS, Mr. DE LA GARZA, Mr. GRAY of Illinois, Mr. VENTO, Mr. DORGAN of North Dakota, Mr. NELSON of Florida, Ms. SNOWE, Mr. MACK, Mr. LOTT, Mr. DWYER of New Jersey, Mr. HOWARD, Mr. MADIGAN, Mr. VOLKMER, Mr. GALLEGLY, Mr. SWEENEY, Mr. CHAPPELL, Mr. DENNY SMITH, Mr. LEWIS of California, Mr. COBLE, Mr. MAZZOLI, Mr. EDWARDS of Oklahoma, Mr. LEWIS of Florida, Mr. BROWN of California, Mr. SHUSTER, and Mr. MACKAY.

H.R. 2496: Mr. MURPHY and Mr. GUNDERSON.

H.R. 2672: Mr. MONTGOMERY, Mr. SOLOMON, Mr. EDWARDS of California, Mr. HAMMERSCHMIDT, Mr. APPLEGATE, Mr. WYLIE, Mr. MICA, Mr. STUMP, Mr. DOWDY of Mississippi, Mr. MCEWEN, Mr. EVANS, Mr. SMITH of New Jersey, Mr. PENNY, Mr. BILIRAKIS, Mr. STAGGERS, Mr. RIDGE, Mr. BRYANT, Mr. DORNAN of California, Mr. GRAY of Illinois, Mr. KANJORSKI, Mr. ROBINSON, Mr. STENHOLM, Mr. KENNEDY, Mr. JOHNSON of South Dakota, Mr. JONTZ, Mr. LEATH of Texas, Mr. JENKINS, Mr. RICHARDSON, and Mr. HEFNER.

H.R. 2680: Mr. ACKERMAN, Ms. PELOSI, Mr. OWENS of New York, Mr. DANIEL, Mr. FAUNTROY, and Mr. STOKES.

H.R. 2717: Mr. MACKAY, Mr. DOWNEY of New York, Mr. FASCELL, Mr. HAYES of Illinois, Mr. HALL of Ohio, and Mr. CONYERS.

H.R. 2788: Mr. DAUB and Mr. FOGLIETTA.

H.R. 2790: Mr. KOLTER.

H.R. 2826: Mr. KOLTER.

H.R. 2866: Mrs. BOXER, Mr. BIAGGI, Mr. GARCIA, Mr. LEWIS of Georgia, and Mr. MORRISON of Connecticut.

H.R. 2870: Mr. PERKINS.

H.R. 2883: Mr. GARCIA, Mr. TRAFICANT, Mr. ROE, Mr. WILSON, Mr. HUGHES, Mr. COELHO, and Mrs. BOXER.

H.R. 2893: Mr. KOLTER.

H.R. 2897: Mr. WALGREN, Mr. BILIRAKIS, Mr. WYDEN, Mr. MADIGAN, Mr. RINALDO, Mr. SCHEUER, Mr. WAXMAN, and Mr. MARKEY.

H.R. 2970: Mr. HOPKINS.

H.R. 2992: Mr. ACKERMAN, Mr. BERMAN, Mr. BRYANT, Mr. FAUNTROY, Mr. FRANK, Mr. GUARINI, Mr. HAMILTON, Ms. KAPTUR, Mr. KASTENMEIER, Mr. KILDEE, Mr. LANCASTER, Mr. LEVIN of Michigan, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. MURPHY, Ms. OAKAR, Mr. OWENS of New York, Mr. PENNY, Mr. SCHEUER, Mr. SOLARZ, and Mr. WILSON.

H.R. 3039: Mr. HUGHES, Mr. TOWNS, Mr. WHEAT, Mr. WEISS, Mr. RANGEL, Mrs. COLLINS, Mr. COYNE, Mr. JONTZ, Mr. KOLTER, Mr. LEHMAN of Florida, Mr. ALEXANDER, Mr. BIAGGI, Mr. GUARINI, Mr. CROCKETT, Mr. MINETA, Mr. FRANK, Mr. ECKART, Mr. LANCASTER, Mr. ACKERMAN, Mr. SIKORSKI, Mr. PANETTA, Mr. MOODY, Mr. HALL of Ohio, Mr. HOWARD, Mr. NELSON of Florida, Mr. NATCHER, Mr. SYNAR, Mr. FAZIO, Mr. KANJORSKI, Mr. DELLUMS, Mr. FORD of Tennessee, Mr. BRYANT, Mr. BRUCE, and Mr. ANNUNZIO.

H.J. Res. 50: Mr. WYLIE, Mr. SABO, and Mr. DEWINE.

H.J. Res. 191: Mr. LIVINGSTON, Mr. HUTTO, Mr. CARDIN, Mr. BUSTAMANTE, Mr. BONKER, Mrs. COLLINS, Mr. FLAKE, Mr. HAMMERSCHMIDT, Mr. SAXTON, Mr. SAVAGE, and Mr. WILSON.

H.J. Res. 227: Mr. GONZALEZ, Mr. DEFAZIO, Mr. GILMAN, Mr. FISH, Mr. MONTGOMERY, Mr. DOWDY of Mississippi, Mr. HEFNER, Mr. LEWIS of Florida, Mr. MCDADE, Mr. FOGLIETTA, Mr. BARNARD, Mr. TRAFICANT, Mr. DANIEL, Mr. MCCOLLUM, Mr. GRANDISON, Mr. TOWNS, and Mr. DORNAN of California.

H.J. Res. 228: Mr. MORRISON of Connecticut, Mr. BUECHNER, Mr. DWYER of New Jersey, Mr. CARDIN, Mr. COYNE, Mr. DEFAZIO, Mr. BADHAM, Mr. CLAY, Mrs. JOHNSON of Connecticut, Mr. SMITH of New Hampshire, Mr. FUSTER, Mr. MOAKLEY, Mr. DIOGUARDI, Mr. JONES of North Carolina, Mr. UDALL, Mr. ROWLAND of Connecticut, Mr. CHAPMAN, Mr. FOGLIETTA, Mr. GEPHARDT, Mr. ROBINSON, Mr. SCHUETTE, Mr. GEJDENSON, Mr. SIKORSKI, Mr. HUNTER, Mr. BERMAN, Mr. CHENEY, Mr. MCMILLEN of Maryland, Mr. MATSUI, Mr. BOLAND, Mr. RINALDO, Mr. ATKINS, Mr. YOUNG of Alaska, Mr. ANDERSON, Mr. TRAXLER, Mr. HAMILTON, Mrs. KENNELLY, Mrs. LLOYD, Mr. MINETA, Mr. ANNUNZIO, Mr. GILMAN, Mr. YATRON, Mr. HAMMERSCHMIDT, Mr. SMITH of Iowa, Mr. MYERS of Indiana, Mr. FASCELL, Mr. HEFNER, Mr. CARR, Mr. VANDER JAGT, Mr. RHODES, Mr. BENNETT, Mr. SHARP, Mr. MILLER of California, Mr. GRADISON, Mr. WILSON, Mr. BARTLETT, Mr. STRATTON, Mr. STUDDS, Mr. MCCLOSKEY, Mr. RAHALL, and Mr. FIELDS.

H.J. Res. 241: Mr. HERTEL and Mr. MCMILLEN of Maryland.

H.J. Res. 243: Mr. MARTINEZ, Mr. DIXON, Mrs. BENTLEY, Mr. DELLUMS, Mr. ANDERSON, Mr. KOSTMAYER, Mr. LEVINE of California, Mr. BROWN of California, Mr. ATKINS, Mr. AKAKA, Mr. BARNARD, Mr. BONER of Tennessee, Mr. CARPER, Mr. BENNETT, and Mr. CONYERS.

H.J. Res. 256: Mr. MARTINEZ and Mr. BATEMAN.

H.J. Res. 313: Ms. SLAUGHTER of New York, Mrs. KENNELLY, and Mr. RANGEL.

H.J. Res. 314: Mr. MCGRATH, Mr. TORRICELLI, Mr. RITTER, Mr. JOHNSON of South Dakota, Mr. DIOGUARDI, Mr. WAXMAN, Ms. SLAUGHTER of New York, Mr. MOLINARI, Mr. DEWINE, Mr. SLATTERY, and Mr. SMITH of New Jersey.

H.J. Res. 317: Mr. LANCASTER, Mr. ACKERMAN, Mr. GRAY of Illinois, Mr. TRAFICANT, Mr. KILDEE, Mr. BROWN of California, Mr. OBERSTAR, Mr. HAYES of Louisiana, Mrs. BENTLEY, Mr. FROST, and Ms. SLAUGHTER of New York.

H.J. Res. 328: Mr. TRAXLER, Mr. LIPINSKI, Mr. ROE, Mr. WALGREN, Mrs. COLLINS, Mr. MCMILLEN of Maryland, Mr. DYSON, Mr. SISISKY, Mr. FAZIO, Mr. BOEHLERT, and Mr. KILDEE.

H. Con. Res. 126: Mr. FAZIO, Mr. GARCIA, and Mr. MARTINEZ.

H. Con. Res. 143: Mr. CONYERS, Mr. GARCIA, Mr. MORRISON of Connecticut, and Mr. MICA.

H. Res. 141: Mr. SYNAR.

H. Res. 184: Mr. COURTER, Mr. SHAW, Mr. LUJAN, Mr. STUMP, Mr. WORTLEY, Mr. LEWIS of California, Mr. MURTHA, Mr. SABO, Mr. HOCHBRUECKNER, Mr. BARTLETT, Mr. PICKETT, Mr. FRENZEL, and Mr. DAUB.

H. Res. 229: Mr. HEFLEY and Mr. BROWN of California.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1195: Mr. RAVENEL.

CONFERENCE REPORT ON H.R. 27

Mr. ST GERMAIN, pursuant to the order of the House on July 30, 1987, submitted the following conference report and statement on the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system:

CONFERENCE REPORT (H. REPT. 100-261)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Competitive Equality Banking Act of 1987".

(b) TABLE OF CONTENTS.—

TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY

Sec. 100. Short title.
Sec. 101. Amendments to the Bank Holding Company Act of 1956.
Sec. 102. Amendments to the Federal Reserve Act.
Sec. 103. Securities affiliations of nonmember insured banks.
Sec. 104. Amendments to savings and loan holding company provisions of the National Housing Act.
Sec. 105. Amendment to the Federal Home Loan Bank Act.
Sec. 106. Securities affiliations of FSLIC insured institutions.
Sec. 107. Mutual holding company amendments.
Sec. 108. Leasing authority of national banks.
Sec. 109. NOW accounts.
Sec. 110. Exemption from affiliate transaction restrictions.
Sec. 111. Consideration of certain acquisitions.

TITLE II—MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

Sec. 201. Moratorium on certain nonbanking activities.
Sec. 202. Authority of Federal banking agencies.
Sec. 203. Intent of Congress.
Sec. 204. Amendments to the International Banking Act of 1978.
Sec. 205. Amendments to the Bank Holding Company Act of 1956.

TITLE III—FSLIC RECAPITALIZATION

Sec. 301. Short title.
Sec. 302. Financing corporation established.
Sec. 303. Mixed ownership government corporation.
Sec. 304. Recapitalization of FSLIC.
Sec. 305. FSLIC authority to charge premiums reduced by amount of financing corporation assessments.
Sec. 306. Miscellaneous provisions.
Sec. 307. Secondary reserve provisions.

TITLE IV—THRIFT INDUSTRY RECOVERY PROVISIONS

Sec. 401. Short title.
Sec. 402. Thrift institution accounting, appraisal, and reserve standards.
Sec. 403. Audit of Federal Asset Disposition Association.
Sec. 404. Thrift industry recovery regulations.
Sec. 405. Capital instrument purchase program.
Sec. 406. Minimum capital requirements.
Sec. 407. Improvements in the supervisory process.
Sec. 408. Prevention of insolvencies.
Sec. 409. Feasibility study relating to establishment of asset holding corporation.
Sec. 410. Notice and disapproval procedure required for all applications to the Bank Board.
Sec. 411. Guidelines for asset disposition.
Sec. 412. Expansion of use of underutilized minority thrift institutions.

Sec. 413. Authority of independent contractors, consultants, and counsel.
Sec. 414. Extension of forbearance previously provided in the acquisition of troubled thrift institutions.
Sec. 415. Congressional oversight.
Sec. 416. Sunset.

TITLE V—FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS

Sec. 501. Short title.
Sec. 502. FDIC assisted emergency interstate acquisitions.
Sec. 503. Bridge banks.
Sec. 504. Conversions.
Sec. 505. Federal depository institutions regulatory agencies not subject to apportionment of funds provisions.
Sec. 506. Federal depository institutions regulatory agencies not subject to sequestration.
Sec. 507. Liquidation proceedings.
Sec. 508. Capital pools.
Sec. 509. Permanent extension of certain temporary provisions of law; 5 year extension of net worth certificates.

TITLE VI—EXPEDITED FUNDS AVAILABILITY

Sec. 601. Short title.
Sec. 602. Definitions.
Sec. 603. Expedited funds availability schedules.
Sec. 604. Safeguard exceptions.
Sec. 605. Disclosure of funds availability policies.
Sec. 606. Payment of interest.
Sec. 607. Miscellaneous provisions.
Sec. 608. Effect on State law.
Sec. 609. Regulations and reports by Board.
Sec. 610. Administrative enforcement.
Sec. 611. Civil liabilities.
Sec. 612. Parity in clearing.
Sec. 613. Effective dates.

TITLE VII—CREDIT UNION AMENDMENTS

Sec. 701. Short title.
Sec. 702. Second mortgage and home improvement loans.
Sec. 703. Ownership interest.
Sec. 704. Faithful performance.
Sec. 705. Membership officers.
Sec. 706. Nonparticipation.
Sec. 707. Property acquisition flexibility.
Sec. 708. Treatment of NCUAB funds.
Sec. 709. Technical and clarifying amendments; removal and prohibition authority.
Sec. 710. Effect of removal or suspension.
Sec. 711. Imposition of conservatorship.
Sec. 712. Reduction in State comment waiting period.
Sec. 713. Authority as conservator.
Sec. 714. Liquidation proceedings.
Sec. 715. Transfer of FTC jurisdiction to NCUAB.
Sec. 716. Assets which may be pledged.

TITLE VIII—LOAN LOSS AMORTIZATION

Sec. 801. Loan loss amortization for agricultural banks.

TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS

Sec. 901. Reaffirmation of security of funds deposited in federally insured depository institutions.

TITLE X—GOVERNMENT CHECKS

Sec. 1001. Report on difficulty in cashing Treasury checks.
Sec. 1002. Time limit on payment of Treasury checks.
Sec. 1003. Cancellation of Treasury checks.
Sec. 1004. Limitation on reclamation actions and claims.
Sec. 1005. Regulations.
Sec. 1006. Effective date.

TITLE XI—INTEREST TO CERTAIN DEPOSITORS

Sec. 1101. Interest to certain depositors.

TITLE XII—MISCELLANEOUS PROVISIONS

Sec. 1201. High yield bond study.
Sec. 1202. Study of competitive issues in the payments mechanism.
Sec. 1203. Study and reports concerning direct investments.
Sec. 1204. Adjustable rate mortgage caps.
Sec. 1205. Separability of provisions.

TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY

SEC. 100. SHORT TITLE.

This title may be cited as the "Competitive Equality Amendments of 1987".

SEC. 101. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) DEFINITIONS.—

(1) AMENDMENT TO DEFINITION OF BANK.—Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) is amended to read as follows:

"(c) BANK DEFINED.—For purposes of this Act—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'bank' means any of the following:

"(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.

"(B) An institution organized under the laws of the United States, 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 which both—

"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

"(ii) is engaged in the business of making commercial loans.

"(2) EXCEPTIONS.—The term 'bank' does not include any of the following:

"(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

"(B) An insured institution (as defined in subsection (j)).

"(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

"(D) An institution that functions solely in a trust or fiduciary capacity, if—

"(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

"(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

"(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(iv) such institution does not—

"(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

"(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

"(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

"(F) An institution which—

"(i) engages only in credit card operations;

"(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

"(iii) does not accept any savings or time deposit of less than $100,000;

"(iv) maintains only one office that accepts deposits; and

"(v) does not engage in the business of making commercial loans.

"(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

"(H) An industrial loan company, industrial bank, or other similar institution which is—

"(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

"(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) which has total assets of less than $100,000,000; or

"(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

"(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

"(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

"(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

"(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

"(I) a trust or fiduciary capacity;

"(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

"(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

"(iv) does not engage in the business of making commercial loans;

"(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

"(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

"(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

"(i) is an insured bank (as defined in section 3(h) of such Act);

"(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

"(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

"(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

"(3) DISTRICT BANK.—The term 'District bank' means any bank operating under the Code of Law for the District of Columbia.".

(2) AMENDMENT TO DEFINITION OF THRIFT INSTITUTION.—Section 2(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(i)) is amended to read as follows:

"(i) THRIFT INSTITUTION.—For purposes of this Act, the term 'thrift institution' means—

"(1) any domestic building and loan or savings and loan association;

"(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

"(3) any Federal savings bank; and

"(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.".

(3) ADDITIONAL DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end thereof the following new subsections:

"(j) INSURED INSTITUTION.—For purposes of this Act, the term 'insured institution' has the meaning given to such term in section 408(a)(1) of the National Housing Act.

"(k) AFFILIATE.—For purposes of this Act, the term 'affiliate' means any company that controls, is controlled by, or is under common control with another company.

"(l) SAVINGS BANK HOLDING COMPANY.—For purposes of this Act, the term 'savings bank holding company' means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

"(m) QUALIFIED SAVINGS BANK.—For purposes of this Act, the term 'qualified savings bank'—

"(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which was organized on or before March 5, 1987; and

"(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1).".

(b) IMMEDIATE DIVESTITURE REQUIREMENT.—Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by adding at the end thereof the following sentence: "Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.".

(c) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES; LIMITATIONS ON CERTAIN BANKS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end thereof the following new subsections:

"(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

"(1) IN GENERAL.—Except as provided in paragraph (9), any company which—

"(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

"(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

"(2) LOSS OF EXEMPTION.—Paragraph (1) shall cease to apply to any company described in such paragraph if—

"(A) such company directly or indirectly—

"(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) of this subsection) after March 5, 1987; or

"(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

"(I) shares acquired in a bona fide fiduciary capacity;

"(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(III) shares held in an account solely for trading purposes;

"(IV) loans or other accounts receivable acquired in the normal course of business; and

"(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or

"(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

"(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

"(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

"(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

"(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

"(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8)), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;

"(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C); or

"(iv) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987.

"(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

"(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

"(ii) such overdraft—

"(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

"(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

"(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

"(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

"(A) registers as a bank holding company under section 5(a) of this Act;

"(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

"(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

"(6) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

"(7) EXAMINATION.—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

"(8) ENFORCEMENT.—

"(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

"(B) APPLICATION OF OTHER ACT.—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

"(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

"(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

"(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

"(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

"(10) EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.—For purposes of clauses (i) and (ii)(V) of paragraph (2)(A), an insured institution is described in this paragraph if—

"(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act; and

"(B) either—

"(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

"(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

"(g) LIMITATIONS ON CERTAIN BANKS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

"(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

"(B) increase the number of locations from which such institution conducts business after March 5, 1987.

"(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

"(A) an application for such acquisition were filed under section 3(a) of this Act; and

"(B) such bank were treated as an additional bank (under section 3(d)).

"(h) TYING PROVISIONS.—

"(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

"(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.—A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.".

(d) SAVINGS BANK ACTIVITIES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following new subsection:

"(f) SAVINGS BANK SUBSIDIARIES OF BANK HOLDING COMPANIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

"(2) INSURANCE ACTIVITIES.—Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

"(3) SAVINGS BANK LIFE INSURANCE.—Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

"(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

"(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

"(C) the savings bank retains its character as a savings bank;

"(D) such activity is carried out by the savings bank directly and not by—

"(i) any subsidiary or affiliate of the savings bank; or

"(ii) the bank holding company which controls such savings bank;

"(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

"(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

"(4) SUBSECTION SHALL CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

"(5) SPECIAL ASSET AGGREGATION RULE FOR PURPOSES OF PARAGRAPH (3).—For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.".

(e) THRIFT INSTITUTIONS' BANK.—Section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E)) is amended to read as follows:

"(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

"(i) is wholly owned by thrift institutions or savings banks; and

"(ii) is restricted to accepting—

"(I) deposits from thrift institutions or savings banks;

"(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

"(III) deposits of public moneys.".

(f) EFFECT ON STATE AUTHORITY TO REGULATE.—Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended—

(1) by striking out "The enactment by the Congress of the Bank Holding Company Act of 1956 shall not" and inserting in lieu thereof "No provision of this Act shall"; and

(2) by inserting "companies," before "banks".

(g) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. 1813(g)) is amended to read as follows:

"(g) SAVINGS BANK.—The term 'savings bank' means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 27(a) of the Federal Deposit Insurance Act is amended by striking out "and insured mutual savings banks".

(h) 1987 AMENDMENT TRANSITION RULE.—

(1) DELAY IN APPLICATION OF AMENDMENT TO CERTAIN INSTITUTIONS.—If—

(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956), as in effect on such date; and

(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person's controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

(2) REQUIREMENTS FOR APPLICATION OF SUBSECTION.—This subsection shall not apply with respect to any institution described in paragraph (1) unless—

(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title;

(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

(3) CONTROLLING INTEREST.—For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

(A) such institution; or

(B) any company which controls such institution,

as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.

SEC. 102. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) IN GENERAL.—The Federal Reserve Act is amended by inserting after section 23A the following:

"RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

"SEC. 23B. (a) IN GENERAL.—

"(1) TERMS.—A member bank and its subsidiaries may engage in any of the transactions described in paragraph (2) only—

"(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or

"(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

"(2) TRANSACTIONS COVERED.—Paragraph (1) applies to the following:

"(A) Any covered transaction with an affiliate.

"(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

"(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

"(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

"(E) Any transaction or series of transactions with a third party—

"(i) if an affiliate has a financial interest in the third party, or

"(ii) if an affiliate is a participant in such transaction or series of transactions.

"(3) TRANSACTIONS THAT BENEFIT AN AFFILIATE.—For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

"(b) PROHIBITED TRANSACTIONS.—

"(1) IN GENERAL.—A member bank or its subsidiary—

"(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

"(i) under the instrument creating the fiduciary relationship,

"(ii) by court order, or

"(iii) by law of the jurisdiction governing the fiduciary relationship; and

"(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

"(2) EXCEPTION.—Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.

"(3) DEFINITIONS.—For the purpose of this subsection—

"(A) the term 'security' has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and

"(B) the term 'principal underwriter' means any underwriter who, in connection with a primary distribution of securities—

"(i) is in privity of contract with the issuer or an affiliated person of the issuer;

"(ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

"(iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

"(c) ADVERTISING RESTRICTION.—A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

"(d) DEFINITIONS.—For the purpose of this section—

"(1) the term 'affiliate' has the meaning given to such term in section 23A (but does not include any company described in section (b)(2) of such section or any bank);

"(2) the terms 'bank', 'subsidiary', 'person', and 'security' (other than security as used in subsection (b)) have the meanings given to such terms in section 23A; and

"(3) the term 'covered transaction' has the meaning given to such term in section 23A (but does not include any transaction which is exempt from such definition under subsection (d) of such section).

"(e) REGULATIONS.—The Board may prescribe regulations to administer and carry out the purposes of this section, including—

"(1) regulations to further define terms used in this section; and

"(2) regulations to—

"(A) exempt transactions or relationships from the requirements of this section; and

"(B) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section,

if the Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of this section.".

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

(1) by inserting "and section 23B" after "section 23A" at each place it appears in paragraph (1); and

(2) by inserting ", 23B," after "23A" in paragraph (3)(A).

(c) TREATMENT OF EDGE ACT AND AGREEMENT CORPORATIONS FOR PURPOSES OF THE BANK HOLDING COMPANY ACT.—

(1) IN GENERAL.—The paragraph of section 25(a) of the Federal Reserve Act which begins "Except as otherwise provided in this section, a majority" (the 11th full paragraph) (12 U.S.C. 619) is amended by adding at the end thereof the following: "Any company, other than a bank as defined in section 2 of the Bank Holding Company Act of 1956, that after March 5, 1987, directly or indirectly acquires control of a corporation organized or operating under the provisions of this section or section 25 shall be subject to the provisions of the Bank Holding Company Act of 1956 in the same manner and to the same extent that bank holding companies are subject thereto, except that such company shall not by reason of this paragraph be deemed a bank holding company for the purpose of section 3 of the Bank Holding Company Act of 1956.".

(2) EXCEPTION.—The amendment made by paragraph (1) does not apply to an acquisition pursuant to the application by Midland

Bank, plc, London, England, pending before the Board of Governors of the Federal Reserve System on July 1, 1987, to acquire a corporation organized or operating under section 25(a) of the Federal Reserve Act. If Midland Bank, plc, London, England, is not otherwise subject to section 4 of the Bank Holding Company Act of 1956, the financial activities of Midland Bank, plc, London, England, in the United States shall, upon the determination of the Board of Governors of the Federal Reserve System made at any time, be subject to section 4 of the Bank Holding Company Act of 1956.

SEC. 103. SECURITIES AFFILIATIONS OF NONMEMBER INSURED BANKS.

(a) IN GENERAL.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended by redesignating paragraph (3) (as amended by section 102(b)(2)) and paragraph (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) SECURITIES AFFILIATIONS OF INSURED NONMEMBER BANKS.—

"(A) IN GENERAL.—The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally in certain securities activities), and the provisions of section 32 of the Banking Act of 1933 (relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall apply to every insured nonmember bank in the same manner and to the same extent as if such insured nonmember bank were a member bank.

"(B) CONTINUATION OF CERTAIN AFFILIATIONS.—This paragraph shall not prohibit the continuation of such an affiliation or relationship which commenced before March 5, 1987, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before March 5, 1987.

"(C) 2-YEAR PERIOD.—An affiliation or officer, director, or employee relationship that becomes unlawful as a result of the enactment of this paragraph may continue for a period of 2 years after the date of enactment of this paragraph.

"(D) FOREIGN BANKS.—The provisions of this paragraph shall not apply to any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, solely because it has an insured branch in the United States, except that the provisions of section 32 of the Banking Act of 1933 shall apply to an insured branch as if it were an insured bank.

"(E) EXCEPTIONS.—The provisions of this paragraph shall not apply to any institution described in subparagraph (D), (F), or (I) of section 2(c)(2) of the Bank Holding Company Act of 1956.

"(F) APPLICABILITY.—This paragraph shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 18(j)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) (as redesignated by subsection (a)) is amended by inserting "or any provision of section 20 of the Banking Act of 1933," after "or any lawful regulation issued pursuant thereto,".

SEC. 104. AMENDMENTS TO SAVINGS AND LOAN HOLDING COMPANY PROVISIONS OF THE NATIONAL HOUSING ACT.

(a) DEFINITIONS.—Section 408(a)(1) of the National Housing Act (12 U.S.C. 1730a(a)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(K) the terms 'bank holding company' and 'bank' have the meanings given to such terms in subsections (a) and (c), respectively, of section 2 of the Bank Holding Company Act of 1956; and

"(L) the term 'acquire' has the meaning given to such term in section 13(f)(8)(E) of the Federal Deposit Insurance Act.".

(b) HOLDING COMPANY ACTIVITIES.—Section 408(c) of the National Housing Act (12 U.S.C. 1730a(c)) is amended to read as follows:

"(c) HOLDING COMPANY ACTIVITIES.—

"(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary (of such company) which is not an insured institution shall—

"(A) engage in any activity or render any service for or on behalf of an insured institution subsidiary for the purpose or with the effect of evading any law or regulation applicable to such insured institution;

"(B) commence any business activity, other than the activities described in paragraph (2), after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(C) continue any business activity, other than the activities described in paragraph (2), after the later of—

"(i) the end of the 2-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company.

"(2) EXEMPT ACTIVITIES.—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not an insured institution:

"(A) Furnishing or performing management services for an insured institution subsidiary of such company.

"(B) Conducting an insurance agency or escrow business.

"(C) Holding, managing, or liquidating assets owned or acquired from an insured institution subsidiary of such company.

"(D) Holding or managing properties used or occupied by an insured institution subsidiary of such company.

"(E) Acting as trustee under deed of trust.

"(F) Any other activity—

"(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Corporation, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

"(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

"(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

"(A) only 1 insured institution, if the insured institution subsidiary of such company is a qualified thrift lender (as determined under subsection (o)); or

"(B) more than 1 insured institution, if—

"(i) all, or all but 1, of the insured institution subsidiaries of such company were acquired pursuant to an acquisition under subsection (m) of this section or section 406(f); and

"(ii) all of the insured institution subsidiaries of such company are qualified thrift lenders (as determined under subsection (o)).

"(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

"(A) IN GENERAL.—No savings and loan holding company and no subsidiary (of such company) which is not an insured institution shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Corporation.

"(B) FACTORS TO BE CONSIDERED BY CORPORATION.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not an insured institution, the Corporation shall consider—

"(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

"(ii) the managerial resources of the companies involved; and

"(iii) the adequacy of the financial resources, including capital, of the companies involved.

"(C) CORPORATION MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Corporation may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

"(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Corporation shall be made in an order issued by the Corporation containing the reasons for such approval or disapproval.

"(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any insured institution referred to in paragraph (3) fails to maintain the status of such institution as a qualified thrift lender, the Corporation may allow, for good cause shown, any company which controls such institution (or any subsidiary of such company which is not an insured institution) up to 3 years to comply with the limitations contained in paragraph (1)(C).

"(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

"(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C)(i), any company which received approval under subsection (e) of this section to acquire control of an insured institution between March 5, 1987, and the date of the enactment of the Competitive Equality Amendments of 1987 shall not continue any business activity other than the activities described in paragraph (2) after such date of enactment.

"(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and

loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of an insured institution may engage, directly or through any subsidiary (other than an insured institution subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

"(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not an insured institution) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after the date of the enactment of the Competitive Equality Amendments of 1987) of any of the following:

"(i) The savings and loan holding company acquires control of a bank or an additional insured institution (other than an insured institution acquired pursuant to subsection (m) of this section or section 406(f)).

"(ii) Any insured institution subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

"(iii) The savings and loan holding company engages in any business activity—

"(I) which is not described in paragraph (2); and

"(II) in which it was not engaged on March 5, 1987.

"(iv) Any insured institution subsidiary of the savings and loan holding company increases the number of locations from which such insured institution conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under subsection (m) of this section or section 406(f)).

"(v) Any insured institution subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the insured institution subsidiary and the affiliate.

"(D) ORDER BY CORPORATION TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Corporation, after opportunity for hearing, if the Corporation determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

"(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not an insured institution), which controls a single insured institution on the date of enactment of the Competitive Equality Amendments of 1987 shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.".

(c) REQUIREMENTS FOR TREATMENT AS A QUALIFIED THRIFT LENDER.—

(1) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by adding at the end thereof the following new subsection:

"(o) QUALIFIED THRIFT LENDER REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any insured institution shall have the status of a qualified thrift lender if—

"(A) the qualified thrift investments of such insured institution equal or exceed 60 percent of the total tangible assets of such institution; and

"(B) the qualified thrift investments of such insured institution continue to equal or exceed 60 percent of the total tangible assets of such institution on an average basis in 3 out of every 4 quarters and 2 out of every 3 years.

"(2) TRANSITION RULE FOR CERTAIN INSTITUTIONS.—

"(A) IN GENERAL.—If any insured institution—

"(i) which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

"(ii) the principal assets of which were acquired from an institution which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982,

meets the requirements of subparagraph (B), such insured institution shall be treated as a qualified thrift lender during the 10-year period beginning on January 1, 1988.

"(B) SUBPARAGRAPH (B) REQUIREMENTS.—An insured institution meets the requirements of this subparagraph if, in the determination of the Corporation—

"(i) the actual thrift investment percentage of such institution does not, after the date of the enactment of the Competitive Equality Amendments of 1987, decrease below the actual thrift investment percentage of such institution on such date of enactment; and

"(ii) the amount by which—

"(I) the actual thrift investment percentage of such institution at the end of each period described in the following table, exceeds

"(II) the actual thrift investment percentage of such institution on such date of enactment,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 60 percent exceeds the actual thrift investment percentage of such institution on such date of enactment:

"For the following period:	*The applicable percentage is:*
The 2½-year period beginning on such date of enactment	*25 percent*
The 5-year period beginning on such date of enactment	*50 percent*
The 7½-year period beginning on such date of enactment	*75 percent*

"(3) EXCEPTIONS GRANTED BY CORPORATION.—Notwithstanding paragraph (1), the Corporation may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Corporation deems necessary if—

"(A) the Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements; or

"(B) the Corporation determines that—

"(i) the grant of any such exception will facilitate an acquisition under section 406(f) or 408(m); and

"(ii) the acquired institution will comply with the transition requirements of paragraph (2)(B).

"(4) FAILURE TO MAINTAIN QTL STATUS.—Any insured institution which fails to maintain its status as a qualified thrift lender, as determined by the Corporation, may not thereafter be a qualified thrift lender for a period of 5 years.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' means the percentage determined by dividing—

"(i) the amount of the qualified thrift investments of an insured institution, by

"(ii) the total amount of tangible assets of such insured institution.

"(B) QUALIFIED THRIFT INVESTMENTS.—The term 'qualified thrift investments' means, with respect to any insured institution, the sum of—

"(i) the aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary of such institution) which are related to domestic residential real estate or manufactured housing;

"(ii) the value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary;

"(iii) subject to paragraph (6), the liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act; and

"(iv) subject to paragraph (6), 50 percent of the dollar amount of the residential mortgage loans originated by such insured institution or subsidiary and sold within 90 days of origination.

"(6) LIMITATION ON TREATMENT OF CERTAIN ASSETS AS THRIFT INVESTMENTS.—The aggregate amount of the assets described in clauses (iii) and (iv) of paragraph (5)(B) which may be taken into account in determining the amount of the qualified thrift investments of any insured institution shall not exceed the amount which is equal to 10 percent of the tangible assets of such institution.

"(7) ADDITIONAL TRANSITION RULE.—The insured institution described in subsection (r)(2)(C) shall be treated as a qualified thrift lender during the 10-year period beginning on January 1, 1988, if the requirements of paragraph (2)(B) are met by such institution.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1988.

(3) REGULATIONS.—The Federal Savings and Loan Insurance Corporation shall prescribe, under the authority of section 408(h)(1) of the National Housing Act, regulations to carry out the provisions of the amendment made by paragraph (1) before January 1, 1988.

(d) TRANSACTIONS BETWEEN INSURED INSTITUTION SUBSIDIARIES AND CERTAIN AFFILIATES.—

(1) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a(d)) is amended by adding after subsection (o) (as added by subsection (c) of this section) the following new subsection:

"(p) RESTRICTIONS ON ACTIVITIES OF CERTAIN INSURED INSTITUTION SUBSIDIARIES.—

"(1) TRANSACTIONS WITH CERTAIN AFFILIATES.—

"(A) IN GENERAL.—Transactions between any insured institution subsidiary of a savings and loan holding company and any affiliate (of such insured institution subsidiary) which is engaged only in business activities described in subsection (c)(2)(F)(i)—

"(i) shall not be subject to subsection (d); and

"(ii) shall be subject to the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if such insured institution were a member bank.

"(B) REGULATIONS.—The Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the limitations and prohibitions described in subparagraph (A).

"(2) CROSS-MARKETING PRACTICES.—

"(A) IN GENERAL.—Notwithstanding any other provision of this section, an insured institution subsidiary of a diversified savings and loan holding company may not offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under section 4(c)(8) of the Bank Holding Company Act of 1956 or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under section 4(c) of that Act), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

"(B) EXCEPTION.—This paragraph shall not apply so as to prohibit an insured institution subsidiary of a diversified savings and loan holding company from offering or marketing the products or services of an affiliate or from permitting its products or services to be offered or marketed by or through an affiliate if—

"(i) the savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the insured institution before January 1, 1984; and

"(ii) at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.".

(2) TECHNICAL AMENDMENT.—Section 408(d) of the National Housing Act (12 U.S.C. 1730a(d)) is amended by striking out "No savings and loan" and inserting in lieu thereof "Except as provided in subsection (p), no savings and loan".

(e) TYING RESTRICTIONS.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (p) (as added by subsection (d) of this section) the following new subsection:

"(q) TYING RESTRICTIONS.—

"(1) STATE CHARTERED INSURED INSTITUTION SUBSIDIARIES.—A State chartered insured institution subsidiary of a savings and loan holding company shall be subject to section 5(q) of the Home Owners' Loan Act of 1933, and regulations prescribed under such subsection, in the same manner and to the same extent as an association (as defined in section 2(d) of such Act).

"(2) HOLDING COMPANIES AND CERTAIN AFFILIATES.—A savings and loan holding company and any of its affiliates (other than an insured institution) shall be subject to section 5(q) of the Home Owners' Loan Act of 1933, and regulations prescribed under such subsection, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated insured institution as if such company or affiliate were an association (as defined in section 2(d) of such Act).".

(f) SAVINGS BANK AS INSURED INSTITUTION.—

(1) IN GENERAL.—Section 408(n) of the National Housing Act (12 U.S.C. 1730a) is amended to read as follows:

"(n) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS INSURED INSTITUTIONS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be an insured institution for the purpose of this section, if the Corporation determines that such bank is a qualified thrift lender (as determined under subsection (o)).

"(2) FAILURE TO MAINTAIN QTL STATUS.—If any savings bank which is deemed to be an insured institution under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Corporation, such bank may not thereafter be a qualified thrift lender for a period of 5 years.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 408(a)(1)(A) of the National Housing Act (12 U.S.C. 1730a(a)(1)(A)) is amended by adding before the semicolon at the end thereof the following: "and a savings bank which is deemed by the Corporation to be an insured institution under subsection (n)".

(g) THRIFT ACQUISITIONS.—Section 408(e)(3) of the National Housing Act (12 U.S.C. 1730(e)) is amended to read as follows:

"(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Corporation under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling insured institutions in more than one State, unless—

"(A) such company, or an insured institution subsidiary of such company, is authorized to acquire control of an insured institution subsidiary, or to operate a home or branch office, in the additional State or States pursuant to subsection (m);

"(B) such company controls an insured institution subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

"(C) the statute laws of the State in which the insured institution, control of which is to be acquired, is located are such that an insured institution chartered by such State could be acquired by an insured institution chartered by the State where the acquiring insured institution or savings and loan holding company is located (or by a holding company that controls such a State-chartered insured institution), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.".

(h) EMERGENCY ACQUISITIONS.—Section 408(m)(1)(A)(i) of the National Housing Act (12 U.S.C. 1730a(m)(1)(A)(i)) is amended by inserting "(c)," before "(e)(2)".

SEC. 105. AMENDMENT TO THE FEDERAL HOME LOAN BANK ACT.

Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following:

"(e) REDUCED ELIGIBILITY FOR ADVANCES FOR CERTAIN MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS.—

"(1) IN GENERAL.—Except as the Board may prescribe, a member that is not a qualified thrift lender may not receive advances in excess of the amount determined by multiplying—

"(A) the total amount of advances that such member would be eligible to receive in the absence of this subsection; by

"(B) such member's actual thrift investment percentage.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to—

"(A) a savings bank as defined in section 3(g) of the Federal Deposit Insurance Act;

"(B) an insured institution which was chartered prior to October 15, 1982, as a savings bank under State law; or

"(C) an insured institution which acquired its principal assets from an institution which was chartered prior to October 15, 1982, as a savings bank under State law.

"(3) DEFINITIONS.—As used in this subsection—

"(A) INSURED INSTITUTION.—The term 'insured institution' has the same meaning as in section 408(a)(1)(A) of the National Housing Act.

"(B) QUALIFIED THRIFT LENDER.—The term 'qualified thrift lender' has the same meaning as in section 408(o) of the National Housing Act.

"(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' has the same meaning as in section 408(o)(5)(A) of the National Housing Act.".

SEC. 106. SECURITIES AFFILIATIONS OF FSLIC INSURED INSTITUTIONS.

(a) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (q) (as added by section 104(e) of this title) the following new subsection:

"(r) SECURITIES AFFILIATIONS.—

"(1) IN GENERAL.—The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally in certain securities activities) and the provisions of section 32 of the Banking Act of 1933 (relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall be applicable to every insured institution in the same manner and to the same extent as if such insured institution were a member bank.

"(2) EXCEPTIONS.—This subsection does not prohibit—

"(A) the continuation of such an affiliation or relationship which commenced prior to March 5, 1987, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before such date;

"(B) the Washington Mutual Savings Bank, located in the State of Washington, from acquiring control of one or more insured institutions or establishing an officer, director, or employee relationship between such an insured institution and any affiliate of the savings bank referred to in section 18(j)(3)(B) of the Federal Deposit Insurance Act;

"(C) the acquisition of Peoples Savings and Loan Association of Owatonna, Minnesota, by Miller and Schroeder Holdings, Inc. (or any affiliate of such company), or the establishment of any officer, director, or employee relationship between such association and such company or any affiliate of such company, including Miller and Schroeder Financial, Inc.; or

"(D) such an affiliation or officer, director, or employee relationship which results from the acquisition by an organization described in paragraph (1) of an insured institution under subsection (m) of this section,

if such institution has total assets of $500,000,000 or more at the time of such acquisition.

"(3) TWO-YEAR PERIOD.—An affiliation or an officer, director, or employee relationship that becomes unlawful as a result of the enactment of this subsection may continue for a period of 2 years after the date of the enactment of this subsection.

"(4) EXEMPT ACTIVITIES OF CERTAIN INSTITUTIONS.—Nothing in this subsection or section 18(j)(3) of the Federal Deposit Insurance Act prohibits an affiliation or an officer, director, or employee relationship between an insured institution or an institution which is eligible to become a member of a Federal Home Loan Bank, and an organization engaged principally in the issuance, sale, underwriting, or distribution, at wholesale or retail, or through syndicate participation, of—

"(A) securities representing or secured by interests in real estate or real estate loans or pools of real estate loans;

"(B) interests in partnerships formed primarily to own, operate, manage, or invest in real estate;

"(C) insurance products deemed to be securities, including without limitation variable annuities and variable life insurance;

"(D) securities of an investment company, as such term is defined in the Investment Company Act of 1940; and

"(E) any securities to the extent such issuance, sale, underwriting, or distribution is permitted for national banks.

"(5) REGULATIONS.—

"(A) IN GENERAL.—The Corporation is authorized to issue rules and regulations and to publish interpretations governing the implementation of this subsection, and shall enforce the provisions of this subsection.

"(B) FEDERAL DEPOSIT INSURANCE CORPORATION AUTHORITY.—For the purpose of paragraph (4), the Federal Deposit Insurance Corporation is authorized to issue rules and regulations and publish interpretations with respect to savings banks and other institutions subject to section 18(j)(3) of the Federal Deposit Insurance Act.".

(b) EXPIRATION DATE.—The amendment made by subsection (a) shall cease to be effective on March 1, 1988.

SEC. 107. MUTUAL HOLDING COMPANY AMENDMENTS.

(a) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (r) (as added by section 106(a) of this title) the following new subsection:

"(s) MUTUAL HOLDING COMPANIES.—

"(1) IN GENERAL.—Notwithstanding any provision of Federal law other than this title, an insured institution operating in mutual form may reorganize so as to become a holding company by—

"(A) chartering an interim savings institution, the stock of which is to be wholly owned by the mutual institution; and

"(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings institution.

"(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

"(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings institution; and

"(B) in the case of an institution in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the institution's charter and bylaws.

"(3) NOTICE TO THE CORPORATION; DISAPPROVAL PERIOD.—

"(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), an insured institution seeking to establish a mutual holding company shall provide written notice to the Corporation. The notice shall contain such relevant information as the Corporation shall require by regulation or by specific request in connection with any particular notice.

"(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Corporation within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the insured institution providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

"(C) GROUNDS FOR DISAPPROVAL.—The Corporation may disapprove any proposed holding company formation only if—

"(i) such disapproval is necessary to prevent unsafe or unsound practices;

"(ii) the financial or management resources of the insured institution involved warrant disapproval;

"(iii) the insured institution fails to furnish the information required under subparagraph (A); or

"(iv) the insured institution fails to comply with the requirement of paragraph (2).

"(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), an insured institution may, subject to the approval of the Corporation, retain capital assets at the holding company level to the extent that such capital exceeds adequate reserves as prescribed pursuant to section 403(b) or the comparable provisions of State or Federal law.

"(4) OWNERSHIP.—Persons having ownership rights in the mutual institution pursuant to section 5(b)(1)(B) of the Home Owners' Loan Act of 1933 or State law shall have the same ownership rights with respect to the mutual holding company.

"(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

"(A) Investing in the stock of an insured institution.

"(B) Acquiring a mutual institution through the merger of such institution into an insured institution subsidiary of such holding company or an interim savings institution subsidiary of such holding company.

"(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is an insured institution.

"(D) Investing in a corporation the capital stock of which is available for purchase by an insured institution under Federal law or under the law of any State where the subsidiary insured institution or institutions have their home offices.

"(E) Engaging in the activities described in subsection (c)(2), except subparagraph (B).

"(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

"(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

"(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

"(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

"(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

"(7) REGULATION.—Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) MUTUAL HOLDING COMPANY.—The term 'mutual holding company' means a corporation organized as a holding company under this subsection.

"(B) MUTUAL INSTITUTION.—The term 'mutual institution' means—

"(i) an insured institution; or

"(ii) a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act), which is operating in mutual form.

(b) AMENDMENT TO THE BANK HOLDING COMPANY ACT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following:

"(g) MUTUAL BANK HOLDING COMPANY.—

"(1) ESTABLISHMENT.—Notwithstanding any provision of Federal law other than this Act, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

"(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.".

SEC. 108. LEASING AUTHORITY OF NATIONAL BANKS.

Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof the following:

"Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association.".

SEC. 109. NOW ACCOUNTS.

Section 2(a)(2) of Public Law 93-100 (12 U.S.C. 1832(a)(2)) is amended by inserting the term "political," immediately after "educational,".

SEC. 110. EXEMPTION FROM AFFILIATE TRANSACTION RESTRICTIONS.

Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (s) (as added by section 107(a) of this title) the following new subsection:

"(t) EXEMPTION.—

"(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, an insured institution that is a subsidiary of an insured institution or insured institutions the voting stock of which is 80 percent owned by the same company shall not be subject—

"(A) to the provisions of subsection (d) of this section as to transactions with such

parent insured institution or affiliate insured institutions (and their subsidiaries), or

"(B) to the provisions of subsections (f) and (g).

"(2) LOW QUALITY ASSETS.—An insured institution (or its subsidiary) may not purchase a low quality asset, as such term is defined in section 23A of the Federal Reserve Act, from another insured institution (or its subsidiary) in a transaction exempted by this subsection and any transaction with another insured institution (or its subsidiary) under this subsection shall be on terms and conditions that are consistent with safe and sound financial practices.

"(3) DEFINITION.—For purposes of this subsection, an 'insured institution' includes an institution that was chartered prior to October 15, 1982, as a savings bank or cooperative bank under State law and that is or becomes a savings and loan holding company or is or becomes a subsidiary of a savings and loan holding company.".

SEC. 111. CONSIDERATION OF CERTAIN ACQUISITIONS.

(a) AMENDMENT TO SECTION 408.—Section 408(e) of the National Housing Act (12 U.S.C. 1730a(e)) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by inserting a new paragraph (4) to read as follows:

"(4) CONSIDERATION OF LOSS OF CERTAIN TAX BENEFITS.—

"(A) IN GENERAL.—In each case in which a filing of any type is required by this section, or regulations prescribed under this section, before the acquisition of stock of an insured institution, the Corporation, in evaluating such filing, may consider the likelihood that the proposed acquisition will result in the loss or reduction of the tax benefits of the insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986.

"(B) REQUIRED CONSIDERATION IN CERTAIN CASES.—The Corporation shall, with respect to any acquisition, give consideration to the likelihood of future loss or reduction of the tax benefits of an insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 if such net operating loss carryforwards result from the insured institution's acquisition of one or more insured institutions under subsection (m) of this section or section 406(f) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.

"(C) PERMITTED TRANSACTIONS.—Notwithstanding subparagraph (A) or (B), the Corporation may permit—

"(i) acquisitions in which the proposed acquirer commits itself in writing to maintain the ratio of tangible equity capital to liabilities of the insured institution to be acquired, as determined in accordance with generally accepted accounting principles, in an amount equal to the ratio in existence at the time of filing with the Corporation,

"(ii) acquisitions which are approved by the holders of a majority of the voting stock of the institution to be acquired, or

"(iii) acquisitions pursuant to subsection (m) of this section or section 406(f) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.".

(b) AMENDMENT TO SECTION 407.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (8) through (18) as paragraphs (9) through (19), respectively;

(2) by inserting a new paragraph (8) to read as follows:

"(8) CONSIDERATION OF LOSS OF CERTAIN TAX BENEFITS.—

"(A) IN GENERAL.—In each case in which a filing of any type is made under this subsection, or regulations prescribed under this section, before the acquisition of stock of an insured institution, the Corporation, in evaluating such filing, may consider the likelihood that the proposed acquisition will result in the loss or reduction of the tax benefits of an insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986.

"(B) REQUIRED CONSIDERATION IN CERTAIN CASES.—The Corporation shall, with respect to any acquisition, give consideration to the likelihood of future loss or reduction of the tax benefits of an insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 if such net operating loss carry forwards result from the insured institution's acquisition of one or more insured institutions under section 406(f) or 408(m) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.

"(C) PERMITTED TRANSACTIONS.—Notwithstanding subparagraph (A) or (B), the Corporation may permit—

"(i) acquisitions in which the proposed acquirer commits itself in writing to maintain the ratio of tangible equity capital to liabilities of the insured institutions to be acquired, as determined in accordance with generally accepted accounting principles, in an amount equal to the ratio in existence at the time of filing with the Corporation,

"(ii) acquisitions which are approved by the holders of a majority of the voting stock of the institution to be acquired, or

"(iii) acquisitions under section 406(f) or 408(m), or are acquisitions that are otherwise deemed to be supervisory cases by the Corporation.".

TITLE II—MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

SEC. 201. MORATORIUM ON CERTAIN NONBANKING ACTIVITIES.

(a) APPLICABILITY.—The provisions of this section shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.

(b) MORATORIUM.—

(1) A foreign bank or other company covered by subsection (c) of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106(c)) shall not, under any provision of law which is not applicable to domestic bank holding companies, expand any activity in which it is engaged pursuant to that subsection by acquiring an interest in, or the assets of, a going concern. This paragraph shall not apply to any "domestically-controlled affiliate covered in 1978" as defined in that subsection.

(2) A Federal banking agency may not authorize or allow by action, inaction, or otherwise any bank holding company or subsidiary or affiliate thereof, any foreign bank or other company subject to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), or any insured bank or subsidiary or affiliate thereof to engage in the United States to any extent whatever—

(A) in the flotation, underwriting, public sale, dealing in, or distribution of securities if that approval would require the agency to determine that the entity which would conduct such activities would not be engaged principally in such activities,

(B) in any securities activity not legally authorized in writing prior to March 5, 1987, or

(C) in the operation of a nondealer marketplace in options.

Subparagraph (B) shall not affect (i) activities in which any bank holding company or subsidiary or affiliate thereof, any foreign bank or other company subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or any insured bank or subsidiary or affiliate thereof acts only as an agent; (ii) activities which had been lawfully engaged in prior to March 5, 1987; or (iii) sales or transactions closed on or before June 30, 1987.

(3) A Federal banking agency may not issue any rule, regulation, or order that would have the effect of increasing the insurance powers of banks, bank holding companies, foreign banks or other companies subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or banking or nonbanking subsidiaries thereof with respect to any activities in the United States, either with respect to specific banks or bank holding companies or subsidiaries thereof or generally beyond those expressly authorized for bank holding companies under subparagraphs (A) through (G) of section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)(A) through (G)).

(4) Except as provided in section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)), as added by section 101(d) of this Act, the Board of Governors of the Federal Reserve System may not approve the acquisition by a bank holding company or by a foreign bank or other company subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, of any company, including a State-chartered bank, unless the bank holding company, foreign bank, or other company has agreed to limit the insurance activities in the United States of the company to be acquired to those permissible under section 4(c)(8) of the Bank Holding Company Act of 1956. This paragraph shall not apply to the acquisition of a State-chartered bank that upon acquisition would be subject to the Bank Holding Company Act of 1956, pursuant to a reorganization plan under which the stockholders of the bank exchange their shares for shares in a newly created bank holding company which is not a subsidiary of any other company or to the acquisition of a State-chartered bank by a bank holding company that on March 6, 1987, controlled one or more State-chartered banks that have engaged in insurance activities identical to those of the newly acquired institution so long as the bank holding company agrees that it will—

(A) within 2 years of the consummation of its acquisition of the State-chartered bank, divest or terminate that bank's impermissible insurance activities, and

(B) limit the bank's insurance activities during that 2-year period to the renewal of existing policies.

(5) A national bank or a Federal branch or agency of a foreign bank may not expand its insurance agency activities pursuant to the Act of September 7, 1916 (12 U.S.C. 92), into places where it was not conducting such activities as of March 5, 1987.

(6) A Federal banking agency may not issue any rule, regulation, or order that would have the effect of increasing real estate powers in the United States of banks,

bank holding companies, foreign banks or other companies subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or of any banking or nonbanking subsidiaries of any such banks or companies.

(c) DEFINITIONS.—As used in this section and section 202—

(1) the term "affiliate" has the same meaning as in section 2(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)(2)), as added by section 101(a) of this Act;

(2) the term "bank holding company" has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(3) the term "Federal banking agency" has the same meaning as the term "appropriate Federal banking agency" has in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(4) the term "insured bank" has the same meaning as in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) INSURANCE AUTHORITY OF BANKING ORGANIZATIONS.—Nothing in this section may be construed to increase or reduce the insurance authority of bank holding companies or banking or nonbanking subsidiaries thereof or of national banks under current law.

(e) INSURANCE AUTHORITY OF CERTAIN STATE-CHARTERED BANKS.—

(1) FREESTANDING STATE-CHARTERED BANKS.—Nothing in this section shall be construed to deny any State the authority to permit its State-chartered banks that are not controlled by bank holding companies from engaging in any insurance activity.

(2) STATE-CHARTERED SUBSIDIARIES OF BANK HOLDING COMPANIES.—In addition, neither the existence of the moratorium nor its expiration shall be construed to increase, decrease, or affect in any way the authority of State-chartered bank subsidiaries of bank holding companies with respect to insurance activities.

SEC. 202. AUTHORITY OF FEDERAL BANKING AGENCIES.

Nothing in section 201 may be construed to prevent a Federal banking agency from issuing any rule, regulation, or order pursuant to its legal authority in existence on the day preceding the date of enactment of this Act to expand the securities, insurance, or real estate powers of banks or bank holding companies that are subject to the moratorium established under section 201 if the effective date of such rule, regulation, or order is delayed until the expiration of such moratorium.

SEC. 203. INTENT OF CONGRESS.

(a) COMPREHENSIVE CONGRESSIONAL REVIEW OF BANKING AND FINANCIAL LAWS.—It is the intent of the Congress, through the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, to conduct a comprehensive review of our banking and financial laws and to make decisions on the need for financial restructuring legislation in the light of today's changing financial environment both domestic and international before the expiration of such moratorium.

(b) CONGRESSIONAL INTENT NOT TO RENEW OR EXTEND MORATORIUM.—It is the intent of the Congress not to renew or extend the moratorium established under section 201 whether or not subsequent banking legislation is passed by the Congress.

SEC. 204. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) TERMINATION OF CERTAIN NONBANKING ACTIVITIES.—Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end thereof the following new paragraph:

"(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a 'bank holding company' as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.".

(b) CLERICAL AMENDMENT.—Section 8 of the International Banking Act of 1978 is amended by striking out "(c) After" and inserting in lieu thereof "(c)(1) After".

SEC. 205. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) EXCEPTION TO NONBANKING PROHIBITIONS.—Section 2(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(h)) is amended by striking out paragraph (2) and by adding after paragraph (1) the following new paragraphs:

"(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term 'section 2(h)(2) company' means any company whose shares are held pursuant to this paragraph.

"(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before the date of enactment of the Competitive Equality Banking Act of 1987.

"(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

"(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.".

TITLE III—FSLIC RECAPITALIZATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987".

SEC. 302. FINANCING CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 20 the following new section:

"SEC. 21. FINANCING CORPORATION.

"(a) ESTABLISHMENT.—Notwithstanding any other provision of law, the Board shall charter a corporation to be known as the Financing Corporation.

"(b) MANAGEMENT OF FINANCING CORPORATION.—

"(1) DIRECTORATE.—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

"(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

"(B) 2 members selected by the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks.

"(2) TERMS.—Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

"(3) VACANCY.—If any member leaves the office in which such member was serving when appointed to the Directorate—

"(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

"(B) the successor to the office of such member shall serve the remainder of such member's term.

"(4) EQUAL REPRESENTATION OF BANKS.—No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms on the Directorate as the president of such bank (before the appointment of such president to such additional term).

"(5) CHAIRPERSON.—The Chairman of the Federal Home Loan Bank Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

"(6) STAFF.—

"(A) NO PAID EMPLOYEES.—The Financing Corporation shall have no paid employees.

"(B) POWERS.—The Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

"(7) ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

"(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Board required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

"(ii) the aggregate amount the Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

"(C) ADMINISTRATIVE EXPENSES DEFINED.—For purposes of this paragraph, the term 'administrative expenses' does not include—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A));

"(ii) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; or

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)).

"(8) REGULATION BY BOARD.—The Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe.

"(9) NO COMPENSATION FROM FINANCING CORPORATION.—Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

"(c) POWERS OF FINANCING CORPORATION.—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the Board may prescribe:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any security issued by the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act.

"(3) To issue debentures, bonds, or other obligations and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

"(4) To impose assessments in accordance with subsection (f).

"(5) To adopt, alter, and use a corporate seal.

"(6) To have succession until dissolved.

"(7) To enter into contracts.

"(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction.

"(9) To exercise such incidental powers not inconsistent with the provisions of this section or section 402(b) of the National Housing Act as are necessary or appropriate to carry out the provisions of this section.

"(d) CAPITALIZATION OF FINANCING CORPORATION.—

"(1) PURCHASE OF CAPITAL STOCK BY FEDERAL HOME LOAN BANKS.—

"(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the Board may prescribe under this subsection.

"(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the Board and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Board at not less than par value.

"(2) AGGREGATE DOLLAR AMOUNT LIMITATION ON ALL INVESTMENTS.—The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000.

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The cumulative amount of funds invested in nonvoting capital stock of the Financing Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount of—

"(A) the sum of—

"(i) the reserves maintained by such bank on December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits (as defined in paragraph (7)) of such bank on such date; and

"(B) the sum of—

"(i) the amounts added to reserves after December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits of such bank accruing after such date.

"(4) PRO RATA DISTRIBUTION OF 1ST $1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—With respect to the first $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by applying to the total amount of such investment by all such banks the percentage appearing in the following table for each such bank:

"Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2796
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by multiplying such excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all insured institutions which are members of such bank; by

"(B) the sum of the total assets (as of such date) held by all insured institutions which are members of any Federal Home Loan Bank.

"(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the Board under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the 'excess amount')—

"(i) the Board shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

"(ii) the Board shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available for dividends shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING HOME LOAN BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Board by multiplying the excess amount by the percentage arrived at by dividing—

"(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

"(ii) the aggregate amount of such stock held by all remaining banks at such time.

"(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the Board by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

"(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf an investment is made under subparagraph (A)(i) shall not exceed an amount equal to ½ of the net earnings available for dividends of the bank for the year.

"(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Board shall prescribe by regulations) the balance in which shall be available only for such purchases.

"(F) NET EARNINGS AVAILABLE FOR DIVIDENDS DEFINED.—For purposes of this paragraph, the term 'net earnings available for dividends' means the net earnings of a bank for any period as computed after reducing the amount of earnings for such period by the amount required to be carried (for such period) to reserves maintained by such bank pursuant to the first two sentences of section 16 of this Act.

"(7) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term 'undivided profits' means retained earnings minus the sum of—

"(A) that portion required to be added to reserves maintained pursuant to the first two sentences of section 16 of this Act; and

"(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined under the following table:

"Bank	Dollar amount
Federal Home Loan Bank of Boston	$3.2 million
Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

"(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

"(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the Board) shall not exceed the lesser of—

"(A) an amount equal to the greater of—

"(i) 5 times the amount of the nonvoting capital stock of the Financing Corporation which is outstanding at such time; or

"(ii) the sum of the face amounts (the amount of principal payable at maturity) of securities described in subsection (g)(2) which are held at such time in the segregated account established pursuant to such subsection; or

"(B) $10,825,000,000.

"(2) ANNUAL LIMITATION ON NET NEW BORROWING.—Net new borrowing by the Financing Corporation—

"(A) shall not exceed an amount equal to $3,750,000,000 in the 1-year period beginning on the date of the enactment of the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987; and

"(B) shall not exceed an amount equal to $3,750,000,000 in each 1-year period beginning after the 1-year period described in subparagraph (A).

"(3) NET PROCEEDS TO BE INVESTED IN CAPITAL OF FSLIC.—Subject to such terms and conditions as may be approved by the Board, the net proceeds of any obligation issued by the Financing Corporation shall be used to—

"(A) purchase capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act; or

"(B) refund any previously issued obligation the net proceeds of which were invested in the manner described in subparagraph (A).

"(4) LIMITATION ON TERM OF OBLIGATIONS.—No obligation of the Financing Corporation may be issued which matures—

"(A) more than 30 years after the date of issue; or

"(B) after December 31, 2026.

"(5) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—Obligations issued under this section by the Financing Corporation with the approval of the Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(6) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Financing Corporation.

"(7) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Financing Corporation and the interest payable on such obligations shall not be obligations of, or guaranteed as to principal or interest by, the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation and the obligations shall so plainly state.

"(8) TAX EXEMPT STATUS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), obligations of the Financing Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 13.

"(B) EXCEPTION.—The Financing Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31, United States Code (relating to determination of tax status of interest on obligations).

"(9) OBLIGATIONS ARE EXEMPT SECURITIES.—Notwithstanding paragraph (7), obligations of the Financing Corporation shall be deemed to be exempt securities (within the meaning of laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

"(10) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The Chairman of the Board and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of obligations issued under this section.

"(f) ASSESSMENT AUTHORITY OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation may, with the approval of the Board, assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph on any insured institution for any year may not exceed an amount equal to $\frac{1}{12}$th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

"(2) SUPPLEMENTAL ASSESSMENT AUTHORIZED.—Upon the unanimous vote of the Directorate that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, the Financing Corporation may, with the approval of the Board and in addition to any assessment assessed under paragraph (1), assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph on any insured institution for any year may not exceed an amount equal to $\frac{1}{6}$th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

"(3) TOTAL AMOUNT OF ASSESSMENTS MAY NOT EXCEED INTEREST AND FINANCING COSTS.—The aggregate amount of all assessments assessed under paragraphs (1) and (2) for any year may not exceed—

"(A) the aggregate amount of—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A)) incurred with respect to obligations issued during such year;

"(ii) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)) incurred during such year; minus

"(B) the aggregate amount of any payments under subsection (g)(4) during such year.

"(4) TERMINATION ASSESSMENTS.—

"(A) ASSESSMENT AUTHORIZED.—The Financing Corporation shall, with the approval of the Board, assess a termination assessment on any insured institution which ceases to be an insured institution.

"(B) MAXIMUM AMOUNT OF ASSESSMENT.—The amount of the assessment on any institution under subparagraph (A) shall be the amount which is equal to the sum of—

"(i) the amount which is equal to 2 times the last annual insurance premium payable by such institution under section 404(b) of the National Housing Act (including the amount of any assessment imposed under paragraph (1) of this subsection in lieu of any such premium); and

"(ii) the amount which is the product of—

"(I) the aggregate amount of all accounts of insured members of such institution (as of the date the institution ceases to be an insured institution); and

"(II) 2 times the rate (expressed as an annual rate) at which the supplemental assessment under section 404(c) of the National Housing Act was assessed against insured institutions by the Federal Savings and Loan Insurance Corporation in 1986.

"(C) REDUCTION IN ASSESSMENT ALLOWED FOR WEAKENED INSTITUTIONS.—The amount of any assessment which the Financing Corporation may otherwise impose under this paragraph on an institution (which ceases to be an insured institution) may be reduced by such amount as the Financing Corporation, with the approval of the Board, may deem appropriate when—

"(i) the institution poses a substantial risk to the assets of the Federal Savings and Loan Insurance Corporation; and

"(ii) such reduction is necessary to assist in the sale or other disposition of the institution.

"(D) TIME FOR PAYING ASSESSMENT.—

"(i) DUE WITHIN 30 DAYS.—If an assessment is imposed on an institution under subparagraph (A), the institution shall be obligated to pay such assessment before the end of the 30-day period beginning on the date on which such institution ceases to be an insured institution.

"(ii) SEMIANNUAL INSTALLMENTS WITH INTEREST.—Notwithstanding the requirement of clause (i), an institution may elect to pay the amount of any assessment imposed under subparagraph (A) in semiannual installments during the period beginning no later than the end of the 30-day period referred to in clause (i) and ending no later than the end of the 2-year period beginning on the date such assessment is imposed, together with interest accruing on the unpaid balance of such amount at a variable rate equal to the sum of—

"(I) the bond equivalent yield on 6-month United States Treasury bills; and

"(II) 100 basis points.

"(E) EXIT FEE EQUALIZATION.—If any institution described in subparagraph (F) paid any exit fee, or the equivalent thereof (as determined by the Corporation), on or before

the date of the enactment of the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, the Corporation shall repay to such institution an amount equal to the amount by which the amount of such fee exceeds the amount which such institution would be required to pay if the amount of such fee were determined under this paragraph as of the date of the enactment of this Act.

"(F) PROVISIONS APPLICABLE TO CERTAIN INSTITUTIONS.—Except as provided in subparagraph (E), no assessment under this paragraph or insurance premium under section 407(d) of the National Housing Act may be imposed on an insured institution which, on or before March 31, 1987, had—

"(i) its status as an insured institution terminated voluntarily, involuntarily, or by operation of law in connection with a conversion into, merger with, acquisition by, consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation;

"(ii) filed an application or notice with any State banking agency or authority, or with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Corporation or the Federal Home Loan Bank Board pursuant to a transaction which, upon consummation thereof, will result in the termination of the institution's status as an insured institution in connection with its conversion into, merger with, acquisition by, consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation; or

"(iii) entered into a letter of intent or a written memorandum of understanding, pursuant to a transaction which will result in the termination of the institution's status as an insured institution in connection with its conversion into, merger with, acquisition by consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

"(G) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, the Federal Savings and Loan Insurance Corporation shall repay to Comerica, Inc. of Detroit, Michigan, an amount equal to any exit fee or equivalent thereof paid by Comerica, Inc.

"(5) PAYMENT TO FINANCING CORPORATION.—All assessments assessed by the Financing Corporation under paragraph (1), (2), or (4) shall be paid to the Financing Corporation.

"(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

"(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the Board, assets of the Financing Corporation, which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act, shall be invested in—

"(A) direct obligations of the United States;

"(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

"(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 305 or 306 of the Federal Home Loan Mortgage Corporation Act; or

"(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

"(2) SEGREGATED ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ASSURE PAYMENT OF PRINCIPAL.—The Financing Corporation shall invest in, and hold in a segregated account, noninterest bearing instruments—

"(A) which are securities described in paragraph (1); and

"(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Financing Corporation,

to assure the repayment of principal on obligations of the Financing Corporation.

"(3) DOLLAR AMOUNT LIMITATION ON INVESTMENT IN ZERO COUPON INSTRUMENTS FOR SEGREGATED ACCOUNT.—The aggregate amount invested by the Financing Corporation under paragraph (2) shall not exceed $2,200,000,000 (as determined on the basis of the purchase price).

"(4) EXCEPTION FOR PAYMENT OF ISSUANCE COSTS, INTEREST, AND CUSTODIAN FEES.—Notwithstanding the requirements of paragraph (1), the assets of the Financing Corporation referred to in paragraph (1) which are not invested under paragraph (2) may be used to pay—

"(A) issuance costs;

"(B) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; and

"(C) custodian fees.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ISSUANCE COSTS.—The term 'issuance costs'—

"(i) means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of any obligation of the Financing Corporation; and

"(ii) includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Financing Corporation in connection with issuing any obligation.

"(B) CUSTODIAN FEES.—The term 'custodian fee' means—

"(i) any fee incurred by the Financing Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under paragraph (2); and

"(ii) any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

"(h) MISCELLANEOUS PROVISIONS RELATING TO FINANCING CORPORATION.—

"(1) TREATMENT FOR CERTAIN PURPOSES.—Except as provided in subsection (e)(8)(B), the Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23.

"(2) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Financing Corporation.

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATION.—Notwithstanding the fact that no Government funds may be invested in the Financing Corporation, the Financing Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(i) FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—There is hereby established the Federal Savings and Loan Insurance Corporation Industry Advisory Committee (hereinafter in this subsection referred to as the 'Committee').

"(2) MEMBERSHIP.—

"(A) APPOINTMENT.—The Committee shall consist of 13 members selected as follows:

"(i) 1 member appointed by the Chairman of the Board from among individuals who are officers of insured institutions and who are not members of the Board or employees of the Board, the Federal Savings and Loan Insurance Corporation, or the Board of Directors of any Federal Home Loan Bank.

"(ii) 1 member elected from each Federal Home Loan Bank district (by the members of the Board of Directors of each such bank who were elected by the members of such bank) from among individuals who are officers of insured institutions.

"(B) TERMS.—Members shall be appointed or elected for terms of 1 year.

"(C) CHAIRPERSON.—The member appointed under subparagraph (A)(i) shall be the chairperson of the Committee.

"(D) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

"(E) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed, in such manner as the Board may prescribe by regulation, by the Federal Home Loan Bank which elected such member (and, in the case of the member appointed by the Chairman of the Board, by the Board) for expenses incurred in connection with attendance of such members at meetings of the Committee.

"(F) MEETINGS.—The Committee shall meet from time to time at the call of the chairperson or a majority of the members.

"(3) DUTIES OF THE COMMITTEE.—The duties of the Committee are as follows:

"(A) To review the reports and budgets prepared pursuant to section 402(k) of the National Housing Act and any other matter which the Board may present for the Committee's consideration.

"(B) To confer with the Board on the reports, budgets, and other matters reviewed under subparagraph (A).

"(C) To prepare written comments and recommendations for the Board and the Federal Savings and Loan Insurance Corporation with respect to the reports, budgets, and other matters reviewed under subparagraph (A) (which shall be submitted to the Board in a timely manner after each meeting).

"(4) ANNUAL REPORT.—

"(A) REQUIRED.—Not later than January 15 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) CONTENTS.—The report required under subparagraph (A) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Board and the Federal Savings and Loan Insurance Corporation during such year.

"(5) REGULATIONS.—The Board shall prescribe such regulations as the Board determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to the Board, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Banks, and the Federal Asset Disposition Association.

"(6) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply to the Committee.

"(7) TERMINATION.—The Committee shall terminate when the Financing Corporation terminates under subsection (j).

"(j) TERMINATION OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

"(A) the date by which all stock purchased by the Financing Corporation in the Federal Savings and Loan Insurance Corporation has been retired; or

"(B) December 31, 2026.

"(2) BOARD AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the Board may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the Board determines to be necessary to settle and conclude the affairs of the Financing Corporation.

"(k) REGULATIONS.—The Board may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) INSURED INSTITUTION.—The term 'insured institution' has the meaning given to such term by section 401(a) of the National Housing Act.

"(2) INSURED MEMBER.—The term 'insured member' has the meaning given to such term by section 401(b) of the National Housing Act.

"(3) DIRECTORATE.—The term 'Directorate' means the directorate established in the manner provided in subsection (b)(1) to manage the Financing Corporation.".

SEC. 303. MIXED OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Financing Corporation.".

SEC. 304. RECAPITALIZATION OF FSLIC.

Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b) ISSUANCE AND SALE OF CAPITAL CERTIFICATES AND STOCK TO FINANCING CORPORATION.—

"(1) AUTHORIZATION TO ISSUE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Corporation may issue—

"(i) nonredeemable capital certificates; and

"(ii) redeemable nonvoting capital stock.

"(B) REQUIREMENT RELATING TO AMOUNT OF STOCK.—The aggregate amount of stock issued by the Corporation under subparagraph (A)(ii) shall be equal to the aggregate amount of the investments made by the Federal Home Loan Banks in the capital stock of the Financing Corporation under section 21 of the Federal Home Loan Bank Act.

"(C) CERTIFICATES AND STOCK MAY BE SOLD ONLY TO FINANCING CORPORATION.—Capital certificates and stock issued under subparagraph (A) may be sold only to the Financing Corporation in the manner and to the extent provided in section 21 of the Federal Home Loan Bank Act and this subsection.

"(D) PROCEEDS OF SALE ARE PART OF PRIMARY RESERVE.—The proceeds of any sale of capital certificates or stock under this paragraph shall be considered part of the primary reserve established by the Corporation pursuant to section 404(a).

"(E) NO DIVIDENDS.—The Corporation shall pay no dividends on any capital certificates or stock issued under this paragraph.

"(2) EQUITY RETURN ACCOUNT.—

"(A) IN GENERAL.—The Corporation shall establish and maintain (until all capital stock issued under subparagraph (A)(ii) of paragraph (1) has been paid off and retired) an equity return account—

"(i) which shall consist only of amounts contributed in accordance with the requirements of subparagraph (B);

"(ii) which shall not be treated as reserves of the Corporation; and

"(iii) the earnings accruing in which shall be transferred in the manner provided in subparagraph (D).

"(B) CONTRIBUTIONS TO ACCOUNT.—

"(i) NO CONTRIBUTION IF RESERVES-TO-ACCOUNTS RATIO IS LESS THAN 0.5 PERCENT.—No contribution shall be made to the equity reserve account established pursuant to subparagraph (A) in any year in which the reserves-to-accounts ratio is less than 0.5 percent.

"(ii) ANNUAL CONTRIBUTIONS REQUIRED.—Except as provided in clause (i), the Corporation shall make contributions to the equity reserve account established pursuant to subparagraph (A)—

"(I) at the end of each year beginning after 1996 through the final payoff year (as defined in clause (vii)); and

"(II) in amounts determined under clauses (iii), (iv), (v), and (vi) of this subparagraph.

"(iii) AMOUNT OF PRIMARY CONTRIBUTION.—The primary contribution to the equity return account for any year for which a contribution is required to be made shall be the amount determined by dividing—

"(I) the aggregate amount of capital stock issued by the Corporation and purchased by the Financing Corporation under paragraph (1)(A); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio is equal to or greater than 0.5 percent and the final payoff year (taking into account the first and last year described).

"(iv) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.25 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1 percent but less than 1.25 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount (as defined in clause (viii)) computed at an annual compound rate not to exceed 6 percent; by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1 percent and the final payoff year (taking into account the first and last year described).

"(v) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.25 percent but less than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 8 percent, minus the sum of any amounts contributed under clause (iv); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.25 percent and the final payoff year (taking into account the first and last year described).

"(vi) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO EXCEEDS 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 10 percent, minus the sum of any amounts contributed under clause (iv) or (v); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.75 percent and the final payoff year (taking into account the first and last year described).

"(vii) FINAL PAYOFF YEAR DEFINED.—For purposes of this subparagraph, the term 'final payoff year' means the year of maturity of the last maturing obligation of the Financing Corporation (which was issued under section 21 of the Federal Home Loan Bank Act and matures before January 1, 2027).

"(viii) INVESTMENT RETURN AMOUNT.—For purposes of clauses (iv), (v), and (vi), the term 'investment return amount' means the amount which would be realized on the aggregate amount invested by the Financing Corporation in capital stock issued by the Corporation under paragraph (1) over the period of the investment if the return on the investment is computed at the rate described in subclause (I) of the respective clauses.

"(C) INVESTMENT OF AMOUNTS IN ACCOUNT.—Amounts accumulating in the equity return account may be invested in such manner as the Corporation determines.

"(D) TRANSFER OF EARNINGS TO PRIMARY RESERVE.—Earnings accruing on any investment (under subparagraph (C)) of amounts in the equity return account shall be transferred to the primary reserve account of the Corporation established pursuant to section 404(a) as such earnings are realized by the Corporation and shall not be treated as amounts in the account.

"(E) RETIREMENT OF CAPITAL STOCK USING BALANCE IN ACCOUNT.—Upon maturity of all obligations of the Financing Corporation under section 21 of the Federal Home Loan Bank Act, the Corporation shall pay off and retire any capital stock issued under paragraph (1)(A)(ii) using only amounts accumulated in the equity return account.

"(F) RESERVES-TO-ACCOUNTS RATIO DEFINED.—For purposes of this paragraph, the term 'reserves-to-accounts ratio' means, with respect to any year, the amount determined by dividing—

"(i) the amount of reserves of the Corporation (determined as of December 31 of the preceding year); by

"(ii) the aggregate amount of all accounts of all of its insured members (determined as of such date).

"(3) FINANCING CORPORATION DEFINED.—For purposes of this subsection, the term 'Financing Corporation' means the Financing Corporation established under section 21 of the Federal Home Loan Bank Act.

"(4) NO REDUCTION OR SUSPENSION OF INSURANCE PREMIUMS WHILE STOCK IS OUTSTANDING.—Notwithstanding any other provision of law, the provisions of subsections (b)(2) and (g) of section 404 shall not apply as long as any share of capital stock issued under paragraph (1)(A)(ii) is outstanding.".

SEC. 305. FSLIC AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.

Section 404 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(j) AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this section, the sum of—

"(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and

"(2) the amount of any premium authorized to be assessed by the Corporation under subsection (c) with respect to such institution,

for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act.".

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) FEDERAL HOME LOAN BANK DIVIDENDS.—Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

"(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

"(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with such bank's investment in the stock of the Financing Corporation under section 21;

"(B) the Board determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

"(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

"(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by the Board under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.".

(b) CONFORMING AMENDMENT.—Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended—

(1) by striking out "After the effective date" and inserting in lieu thereof "(1) After the effective date"; and

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

"(2) The first three sentences of paragraph (1) shall not apply to stock issued by the Corporation to the Financing Corporation under subsection (b)(1)(A).".

(c) LIMITATION ON SPECIAL ASSESSMENT.—Section 404(c) of the National Housing Act (12 U.S.C. 1727(c)) is amended—

(1) by striking out "(c) The Corporation" and inserting in lieu thereof "(c)(1) SPECIAL ASSESSMENT.—Subject to paragraph (2), the Corporation"; and

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

"(2) LIMITATIONS ON AMOUNT OF ASSESSMENT.—The amount of any additional premium assessed by the Corporation against any insured institution under paragraph (1) in any of the following years shall not exceed the amount listed in connection with each such year in the following table (unless the Federal Home Loan Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds):

"For year:	The amount of the additional premium may not exceed:
1987	5/48 of 1 percent of the total amount of the accounts of the insured members of such institution
1988	1/12 of 1 percent of the total amount of the accounts of the insured members of such institution
1989	1/16 of 1 percent of the total amount of the accounts of the insured members of such institution
1990	1/24 of 1 percent of the total amount of the accounts of the insured members of such institution
1991	1/48 of 1 percent of the total amount of the accounts of the insured members of such institution".

(d) PRIORITY OF SECURED INTERESTS.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following new subsection:

"(e) PRIORITY OF CERTAIN SECURED INTERESTS.—Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than claims and rights that—

"(1) would be entitled to priority under otherwise applicable law; and

"(2) are held by actual bona fide purchasers for value or by actual secured parties that are secured by actual perfected security interests.".

(e) COORDINATION OF TERMINATION ASSESSMENT WITH FINAL INSURANCE PREMIUM.—Section 407(d) of the National Housing Act (12 U.S.C. 1730(d)) is amended—

(1) by striking out "(d)" and inserting in lieu thereof "(d)(1) FINAL INSURANCE PREMIUM"; and

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

"(2) EXCEPTION RELATING TO FINAL INSURANCE PREMIUM.—If an institution (whose status as an insured institution is terminated) pays an assessment to the Financing Corporation under section 21(f)(4) of the Federal Home Loan Bank Act with respect to such termination, the institution shall not be obligated to pay the final insurance premium described in the third sentence of paragraph (1).".

(f) SECTION 404(f) DOES NOT APPLY TO INSTITUTIONS WHICH CEASE TO BE FSLIC INSURED.—Section 404(f) of the National Housing Act (12 U.S.C. 1727(f)) is amended—

(1) by striking out "(f) If" and inserting in lieu thereof "(f)(1) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If"; and

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

"(2) EXCEPTION.—In the case of an institution which—

"(A) ceases to be an insured institution; and

"(B) is required to pay an assessment to the Financing Corporation under section 21(f)(4) of the Federal Home Loan Bank Act with respect to the termination of such insured status,

paragraph (1), the last sentence of subsection (e)(1), and subsection (i)(4) shall not apply with respect to such institution.".

(g) SECONDARY RESERVE.—Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by striking out subsection (h).

(h) 1-YEAR PROHIBITION ON TERMINATION OF FSLIC INSURED STATUS.—

(1) IN GENERAL.—No association or insured institution may take any action which would result in the voluntary termination of its status as an insured institution during the 1-year period beginning on the date of the enactment of this Act.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any association or institution described in section 21(f)(4)(F) of the Federal Home Loan Bank Act (as added by section 302 of this title).

(3) AUTHORITY OF FSLIC TO ARRANGE EMERGENCY ACQUISITIONS NOT AFFECTED.—Paragraph (1) shall not affect the authority of the Federal Savings and Loan Insurance Corporation to arrange for the acquisition of an association or insured institution under section 406(f) or 408(m) of the National Housing Act.

(4) DEFINITIONS.—For purposes of this subsection—

(A) ASSOCIATION.—The term "association" has the meaning given to such term under section 2(d) of the Home Owners' Loan Act of 1933.

(B) INSURED INSTITUTION.—The term "insured institution" has the meaning given to such term in section 401(a) of the National Housing Act.

(i) FSLIC REPORT REQUIREMENTS.—Section 402 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(k) REPORTS AND BUDGETS REQUIRED.—

"(1) QUARTERLY REPORTS AND BUDGETS.—Before the end of the 2-week period beginning on the first day of each calendar quarter, the Corporation shall complete a detailed written report and budget describing and explaining—

"(A) planned or anticipated activities and estimates of receipts and expenditures for such calendar quarter; and

"(B) the activities, receipts, and expenditures for the preceding calendar quarter.

"(2) SEMIANNUAL REPORT.—Before the end of the 30-day period beginning on the first day of each semiannual period, the Corporation shall complete a detailed written report and

budget describing and explaining the activities, receipts, and expenditures for the preceding semiannual period.

"(3) SUBMISSION OF SEMIANNUAL REPORT TO CONGRESS.—The Corporation shall submit a copy of each semiannual report required under paragraph (2) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(4) ACTIVITIES, ETC., OF FEDERAL ASSET DISPOSITION ASSOCIATION.—Activities, receipts, and expenditures of the Federal Asset Disposition Association (or any successor thereto) shall be included in any report or budget required under this subsection.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTIVITIES.—The term 'activities' includes any activity engaged in with respect to any insured institution in financial difficulty.

"(B) SEMIANNUAL PERIOD.—The term 'semiannual period' means—

"(i) the period beginning on January 1 of any calendar year and ending June 30 of such year; and

"(ii) the period beginning on July 1 of any calendar year and ending December 31 of such year.".

SEC. 307. SECONDARY RESERVE PROVISIONS.

(a) OFFSETS AGAINST PREMIUMS AUTHORIZED.—Section 404(e) of the National Housing Act (12 U.S.C. 1727(e)) is amended—

(1) by striking out "(e) The Corporation" and inserting in lieu thereof "(e)(1) The Corporation"; and

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

"(2) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

"(A) OFFSETS IN PREMIUM YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in subparagraph (B) and notwithstanding any other provision of law, an insured institution may offset such institution's pro rata share of the statutorily prescribed amount against any premium assessed against such insured institution under subsection (c) for any premium year beginning after 1987 and before 1993.

"(B) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any insured institution under subparagraph (A) for any premium year referred to in subparagraph (A) shall not exceed an amount which is equal to 20 percent of such institution's pro rata share of the statutorily prescribed amount (as computed for the calendar year in which such premium year begins).

"(C) OFFSETS IN PREMIUM YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, an insured institution may offset such institution's pro rata share of the statutorily prescribed amount against any premium assessed against such insured institution under this section for any premium year beginning after 1992.

"(D) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this paragraph, the term 'statutorily prescribed amount' means—

"(i) with respect to calendar year 1988, the sum of $823,705,000; and

"(ii) with respect to any calendar year beginning after 1988, the sum contained in clause (i) minus the aggregate amount of offsets made by all insured institutions before the beginning of the calendar year for which such computation is being made.

"(E) INSURED INSTITUTION'S PRO RATA AMOUNT.—For purposes of this paragraph, an insured institution's pro rata share of the statutorily prescribed amount is the percentage which is equal to such institution's pro rata share of the secondary reserve as determined under this subsection on the day before the date on which the Corporation ceased to recognize the secondary reserve.

"(F) PREMIUM YEAR DEFINED.—For purposes of this paragraph, the term 'premium year' means, with respect to any insured institution, the 1-year period for which a premium is assessed against such insured institution under subsection (b) or (c).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 404(d)(1) of the National Housing Act (12 U.S.C. 1727(d)) is amended—

(A) by striking out the second sentence of subparagraph (A);

(B) by striking out paragraph (B); and

(C) by striking out "(1)(A)" and inserting in lieu thereof "(1)".

(2) Section 404(g) of the National Housing Act (12 U.S.C. 1727(g)) is amended by striking out the second sentence.

TITLE IV—THRIFT INDUSTRY RECOVERY PROVISIONS

SEC. 401. SHORT TITLE.

This title may be cited as the "Thrift Industry Recovery Act".

SEC. 402. THRIFT INSTITUTION ACCOUNTING, APPRAISAL, AND RESERVE STANDARDS.

(a) FEDERALLY CHARTERED THRIFTS.—The Home Owners' Loan Act of 1933 (12 U.S.C. 1461 et seq.) is amended by redesignating section 9 as section 11 and by inserting after section 8 the following new section:

"SEC. 9. ACCOUNTING PRINCIPLES AND OTHER STANDARDS AND REQUIREMENTS.

"(a) IN GENERAL.—The Board shall prescribe regulations which make the following provisions applicable to associations for regulatory purposes:

"(1) ASSET CLASSIFICATION SYSTEM.—An asset classification system shall be established which is consistent with the asset classification system established by the Federal banking agencies, except that such system shall provide that the principal supervisory agent of the Board for each Federal home loan bank district may, in such agent's discretion—

"(A) require an association to create additional general loss reserves on the basis of an evaluation of such institution's assets; or

"(B) determine whether a restructured loan asset which is in a nonperforming status or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms at the time of such restructuring shall be classified.

"(2) APPRAISAL STANDARD.—An appraisal standard shall be established which is consistent with the appraisal standard established by the Federal banking agencies.

"(3) REAPPRAISAL UPON FORECLOSURE.—Generally accepted accounting principles shall apply to any reappraisal of the value of property securing any loan or other extension of credit upon any foreclosure on such property by an association (or any other action by the association in lieu of foreclosure).

"(4) AUTHORIZING USE OF FASB 15 FOR TROUBLED DEBT RESTRUCTURING.—If—

"(A) an association engages in troubled debt restructuring with respect to any loan by the association; and

"(B) the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board),

regulatory accounting principles shall allow the association to account for the effects of the troubled debt restructuring and to account for such association's investment in the original debt instrument (or other agreement which is subject to such restructuring) in the manner provided in such statements.

"(5) CERTAIN LOAN LOSS RESERVES TREATED AS CAPITAL FOR CERTAIN PURPOSES.—Any amount which an association holds in any account as a general loss reserve may be treated, at the option of the association, as capital of the association for purposes of determining regulatory capital or regulatory net worth with respect to such association, to the extent such treatment is consistent with the procedures established by the Federal banking agencies.

"(b) UNIFORM GAAP ACCOUNTING STANDARDS REQUIRED.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the Board shall prescribe, by regulation, uniformly applicable accounting standards to be used by all associations for the purpose of determining compliance with any rule or regulation issued by the Board or the Federal Savings and Loan Insurance Corporation to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies.

"(2) EXCEPTION FOR CERTAIN INSTITUTIONS AND TRANSACTIONS.—Notwithstanding the requirement contained in paragraph (1)(A), the Board may suspend the application of any such standard with respect to any association or transaction if—

"(A) the application of such standard to an association and a company that controls such association would result in such association and company being treated differently than a bank and such bank's holding company considered on a consolidated basis; and

"(B) the transaction was consistent with generally accepted accounting principles when such transaction was completed.

"(c) ASSET EVALUATIONS.—The Board may not require an association to establish reserves against, or write down the value of, any asset in an amount in excess of the amount which would result from an evaluation of such asset which is consistent with generally accepted accounting principles, except that evaluations which are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

"(d) ACCOUNTING FOR SUBORDINATED DEBT AND GOODWILL.—No provision of this section shall affect the authority of the Board to authorize associations to utilize subordinated debt and goodwill in meeting reserve and other regulatory requirements.

"(e) LOSS DEFERRALS.—Notwithstanding any other provision of this section—

"(1) associations may continue, for purposes of determining regulatory net worth and capital, to defer and amortize gains and losses from the disposition of assets pursuant to regulations of the Board in effect before the enactment of the Thrift Industry Recovery Act; and

"(2) the use of such deferrals and amortizations, consistently with the regulations referred to in paragraph (1), shall not reduce the ability of an association to comply with any other rule issued or regulation prescribed by the Board.

"(f) FEDERAL BANKING AGENCY DEFINED.—For purposes of this section, the term 'Federal banking agency' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.".

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 415. ACCOUNTING PRINCIPLES AND OTHER STANDARDS AND REQUIREMENTS.

"(a) IN GENERAL.—The Corporation shall prescribe regulations which make the following provisions applicable to insured institutions for regulatory purposes:

"(1) ASSET CLASSIFICATION SYSTEM.—An asset classification system shall be established which is consistent with the asset classification system established by the Federal banking agencies, except that such system shall provide the principal supervisory agent of the Federal Home Loan Bank Board for each Federal home loan bank district may, in such agent's discretion—

"(A) require an insured institution to create additional general loss reserves on the basis of an evaluation of such institution's assets; or

"(B) determine whether a restructured loan asset which is in a nonperforming status or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms at the time of such restructuring shall be classified.

"(2) APPRAISAL STANDARD.—An appraisal standard shall be established which is consistent with the appraisal standard established by the Federal banking agencies.

"(3) REAPPRAISAL UPON FORECLOSURE.—Generally accepted accounting principles shall apply to any reappraisal of the value of property securing any loan or other extension of credit upon any foreclosure on such property by an insured institution (or any other action by the insured institution in lieu of foreclosure).

"(4) AUTHORIZING USE OF FASB 15 FOR TROUBLED DEBT RESTRUCTURING.—If—

"(A) an insured institution engages in troubled debt restructuring with respect to any loan by the insured institution; and

"(B) the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board),

regulatory accounting principles shall allow the insured institution to account for the effects of the troubled debt restructuring and to account for such insured institution's investment in the original debt instrument (or other agreement which is subject to such restructuring) in the manner provided in such statements.

"(5) CERTAIN LOAN LOSS RESERVES TREATED AS CAPITAL FOR CERTAIN PURPOSES.—Any amount which an insured institution holds in any account as a general loss reserve may be treated, at the option of the insured institution, as capital of the insured institution for purposes of determining regulatory capital or regulatory net worth with respect to such insured institution, to the extent such treatment is consistent with the procedures established by the Federal banking agencies.

"(b) UNIFORM GAAP ACCOUNTING STANDARDS REQUIRED.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the Corporation shall prescribe, by regulation, uniformly applicable accounting standards to be used by all insured institutions for the purpose of determining compliance with any rule or regulation issued by the Corporation or the Federal Home Loan Bank Board to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies.

"(2) EXCEPTION FOR CERTAIN INSTITUTIONS AND TRANSACTIONS.—Notwithstanding the requirement contained in paragraph (1)(A), the Corporation may suspend the application of any such standard with respect to any insured institution or any transaction if—

"(A) the application of such standard to an insured institution and a company that controls such insured institution would result in such insured institution and company being treated differently than a bank and such bank's holding company considered on a consolidated basis; and

"(B) the transaction was consistent with generally accepted accounting principles when such transaction was completed.

"(c) ASSET EVALUATIONS.—The Corporation may not require an insured institution to establish reserves against, or write down the value of, any asset in an amount in excess of the amount which would result from an evaluation of such asset which is consistent with generally accepted accounting principles, except that evaluations which are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

"(d) ACCOUNTING FOR SUBORDINATED DEBT AND GOODWILL.—No provision of this section shall affect the authority of the Corporation to authorize insured institutions to utilize subordinated debt and goodwill in meeting reserve and other regulatory requirements.

"(e) LOSS DEFERRALS.—Notwithstanding any other provision of this section—

"(1) insured institutions may continue, for purposes of determining regulatory net worth and capital, to defer and amortize gains and losses from the disposition of assets pursuant to regulations of the Corporation in effect before the enactment of the Thrift Industry Recovery Act; and

"(2) the use of such deferrals and amortizations, consistently with the regulations referred to in paragraph (1), shall not reduce the ability of an insured institution to comply with any other rule issued or regulation prescribed by the Corporation.

"(f) FEDERAL BANKING AGENCY DEFINED.—For purposes of this section, the term 'Federal banking agency' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.".

(c) REPORT TO CONGRESS.—Not later than the end of the 90-day period beginning on the date of the enactment of this Act—

(1) the Federal Home Loan Bank Board shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (a) to the Congress; and

(2) the Federal Savings and Loan Insurance Corporation shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (b) to the Congress.

(d) EFFECTIVE DATE OF REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any regulation required to be prescribed under the amendment made by subsections (a) and (b) shall be implemented not later than the end of the 150-day period beginning on the date of the enactment of this Act.

(2) UNIFORM GAAP ACCOUNTING STANDARDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the regulations required to be prescribed pursuant to subsection (b) of the amendments made by subsections (a) and (b) of this section shall take effect on December 31, 1987.

(B) COMPLIANCE AT A LATER DATE.—If any association or insured institution demonstrates to the satisfaction of the Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, as the case may be, that it is not feasible for such association or institution to achieve compliance with the regulations referred to in subparagraph (A) by the date contained in such subparagraph, the Board or Corporation may approve a plan submitted by an association or insured institution which allows such association or institution to comply with such regulations at a later date to the extent such later date is the earlier of—

(i) the date by which, in the determination of the Board or Corporation, it is feasible for such association or insured institution to achieve compliance with such regulations; or

(ii) December 31, 1993.

SEC. 403. AUDIT OF FEDERAL ASSET DISPOSITION ASSOCIATION.

Section 9105(a) of title 31, United States Code (relating to audits) is amended by inserting at the end thereof the following new paragraph:

"(3)(A) Notwithstanding any other provision of law and under such regulations as the Comptroller General may prescribe, the Comptroller General shall perform a financial audit of the Federal Asset Disposition Association on whatever basis the Comptroller General determines to be necessary.

"(B) The Federal Asset Disposition Association shall—

"(i) make available to the Comptroller General for audit all records and property of, or used or managed by, the Association which may be necessary for the audit; and

"(ii) provide the Comptroller General with facilities for verifying transactions with the balances or securities held by any depositary, fiscal agent, or custodian.

"(C) For purposes of this paragraph, the term 'Federal Asset Disposition Association' means the savings and loan association established by the Federal Savings and Loan Insurance Corporation under section 406 of the National Housing Act to manage and liquidate nonperforming assets on behalf of such Corporation in accordance with such section.".

SEC. 404. THRIFT INDUSTRY RECOVERY REGULATIONS.

(a) FEDERALLY CHARTERED THRIFTS.—The Home Owners' Loan Act of 1933 (12 U.S.C. 1461 et seq.) is amended by adding after section 9 (as added by section 402(a) of this title) the following new section:

"SEC. 10. THRIFT INDUSTRY RECOVERY REGULATIONS.

"(a) IN GENERAL.—The Board shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable associations in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Federal Savings and Loan Insurance Corporation.

"(b) CAPITAL RECOVERY.—The regulations required to be prescribed under subsection (a) shall provide that an association with net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, may be allowed to con-

tinue to operate and be eligible for capital forbearance if—

"(1) the Board determines that the association's weak capital condition is—

"(A) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of loans, or participations in loans, the value of the collateral for which has been adversely affected by economic conditions in a designated economically depressed region; or

"(B) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of loans, or participation in loans, made by a minority association 50 percent or more of whose loan assets are minority loans and 50 percent or more of whose originated loans are construction or permanent loans for 1 to 4 family residences;

"(2) the Board determines that the association's weak capital condition is not the result of imprudent operating practices, such as practices that were speculative at the time the practices were undertaken, insider abuses, excessive operating expenses, dividends paid by the association, or actions taken solely for the purpose of qualifying for capital recovery under this subsection;

"(3) the Board approves a plan submitted by the association for increasing such association's capital; and

"(4) the association—

"(A) adheres to the plan approved under paragraph (3); and

"(B) submits regular and complete reports on such association's progress in meeting the association's goals under such plan.

"(c) ASSOCIATIONS WITH NET WORTH OF LESS THAN 0.5 PERCENT MAY PARTICIPATE IN CAPITAL RECOVERY.—In the regulations required to be prescribed under subsection (a), the Board may provide that a well-managed association with a net worth of less than 0.5 percent, as determined in accordance with regulatory accounting principles, may, in the discretion of the Board, be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the conditions described in each paragraph of subsection (a) have been met with respect to such association; and

"(2) the association has reasonable and demonstrable prospects of returning to a satisfactory capital level, as determined by the Board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) DESIGNATED ECONOMICALLY DEPRESSED REGION DEFINED.—The term 'designated economically depressed region' means any geographical region which the Board determines, by regulation, to be a region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices.

"(2) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.

"(3) MINORITY ASSOCIATION.—The term 'minority association' means any association of which—

"(A) more than 50 percent of the ownership or control (of such association) is held by minority individuals; and

"(B) more than 50 percent of the net profit or loss (of such association) accrues to minority individuals.

"(4) MINORITY LOAN.—The term 'minority loan' means any obligation or other extension or advance of credit which is made to 1 or more minority individuals or to any person which is owned or controlled by 1 or more minority individuals.".

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended by adding after section 415 (as added by section 402(b) of this title) the following new section:

"SEC. 416. THRIFT INDUSTRY RECOVERY REGULATIONS.

"(a) IN GENERAL.—The Corporation shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable insured institutions in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation.

"(b) CAPITAL RECOVERY.—The regulations required to be prescribed under subsection (a) shall provide that an insured institution with net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, may be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the Corporation determines that the insured institution's weak capital condition is—

"(A) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participations in loans, the value of the collateral for which has been adversely affected by economic conditions in a designated economically depressed region; or

"(B) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participation in loans, made by a minority institution 50 percent or more of whose loan assets are minority loans and 50 percent or more of whose originated loans are construction or permanent loans for 1 to 4 family residences;

"(2) the Corporation determines that the insured institution's weak capital condition is not the result of imprudent operating practices, such as practices that were speculative at the time the practices were undertaken, insider abuses, excessive operating expenses, dividends paid by the insured institution, or actions taken solely for the purpose of qualifying for capital recovery under this subsection;

"(3) the Corporation approves a plan submitted by the insured institution for increasing such institution's capital; and

"(4) the insured institution—

"(A) adheres to the plan approved under paragraph (3); and

"(B) submits regular and complete reports on such institution's progress in meeting the institution's goals under such plan.

"(c) THRIFTS WITH NET WORTH OF LESS THAN 0.5 PERCENT MAY PARTICIPATE IN CAPITAL RECOVERY.—In the regulations required to be prescribed under subsection (a), the Corporation may provide that a well-managed insured institution with a net worth of less than 0.5 percent, as determined in accordance with regulatory accounting principles, may, in the discretion of the Corporation, be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the conditions described in each paragraph of subsection (a) have been met with respect to such insured institution; and

"(2) the insured institution has reasonable and demonstrable prospects of returning to a satisfactory capital level, as determined by the Corporation.

"(d) DEFINITIONS.—For purposes of this section—

"(1) DESIGNATED ECONOMICALLY DEPRESSED REGION DEFINED.—The term 'designated economically depressed region' means any geographical region which the Corporation determines, by regulation, to be a region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices.

"(2) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.

"(3) MINORITY INSTITUTION.—The term 'minority institution' means any insured institution of which—

"(A) more than 50 percent of the ownership or control (of such insured institution) is held by minority individuals; and

"(B) more than 50 percent of the net profit or loss (of such insured institution) accrues to minority individuals.

"(4) MINORITY LOAN.—The term 'minority loan' means any obligation or other extension or advance of credit which is made to 1 or more minority individuals or to any person which is owned or controlled by 1 or more minority individuals.".

(c) IMPLEMENTATION REPORT TO CONGRESS.—The Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall each submit a report to Congress containing the proposed regulations required to be prescribed under subsection (a) or (b), as the case may be, not later than the end of the 90-day period beginning on the date of the enactment of this Act.

(d) EFFECTIVE DATE OF REGULATIONS.—The regulations required to be prescribed under the amendments made by subsections (a) and (b) shall be implemented not later than the end of the 150-day period beginning on the date of the enactment of this Act.

(e) AGENCY STUDY AND REPORT ON, AND CONGRESSIONAL REVIEW OF, CAPITAL RECOVERY.—

(1) STUDY AND REPORT REQUIRED.—Not later than January 31, 1989, the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall jointly—

(A) conduct a detailed evaluation of the effectiveness of the regulations required to be prescribed under the amendments made by subsections (a) and (b) in achieving an increased level of capitalization for thrift institutions; and

(B) submit a report to the Congress containing the findings and conclusions of the Board and the Corporation in connection with the study required under subparagraph (A).

(2) CONGRESSIONAL REVIEW.—The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate shall, upon receipt of the report under paragraph (1)(B), review the regulations and recommend such revisions to the regulations as may be appropriate.

SEC. 405. CAPITAL INSTRUMENT PURCHASE PROGRAM.

Section 406(f) of the National Housing Act (12 U.S.C. 1729(f)) is amended by adding at the end thereof the following new paragraph:

"(6) CAPITAL INSTRUMENT PURCHASE PROGRAM.—

"(A) IN GENERAL.—Notwithstanding any other provision of Federal law (other than subparagraph (C)) and without limitation on any other authority of the Corporation

or the Federal Home Loan Bank Board, the Corporation may exercise its authority to purchase capital instruments in the case of any insured institution for which a plan for increasing capital has been approved by the Corporation pursuant to section 416 or by such Board pursuant to section 10 of the Home Owners' Loan Act of 1933.

"(B) TERMS AND CONDITIONS.—Except as provided in subparagraph (C), the purchase of capital instruments under subparagraph (A) shall be subject to such terms and conditions as the Corporation may prescribe.

"(C) WARRANT REQUIREMENT.—

"(i) IN GENERAL.—In the case of an insured institution with capital stock, the Corporation shall require such institution to negotiate with the Corporation warrants for the purchase of shares of stock as a condition for the purchase of capital instruments by the Corporation, on such terms and conditions as the Corporation may prescribe.

"(ii) MUTUAL INSTITUTIONS.—If any insured institution—

"(I) which is organized on a mutual basis; and

"(II) with respect to which the Corporation has purchased capital instruments,

converts to a stock charter, such insured institution shall comply with the requirements of clause (i) immediately upon such conversion.

"(iii) MAXIMUM AMOUNT.—The amount of shares for which warrants are negotiated under subparagraph (A) with respect to any insured institution shall not exceed the total number of shares outstanding at the time such warrants are issued to the Corporation.

"(iv) REDEMPTION BY INSURED INSTITUTION.—Upon the full redemption of the capital instruments by an insured institution, including all accumulated unpaid dividends, the Corporation may, at the discretion of the Corporation, tender the warrants for redemption by the insured institution.

"(v) PAYMENT ON REDEMPTION.—Upon any redemption of warrants under clause (iv), the insured institution shall pay the Corporation the difference between the fair market value of the warrants on the date of redemption and the exercise price of such warrants.

"(vi) PROCEEDS FROM REDEMPTION OF WARRANTS.—The proceeds of any sale or redemption of warrants under clause (iv) shall be deposited in and be considered a part of the primary reserve established under section 404(a).

"(D) DIVIDENDS.—Capital instruments purchased by the Corporation under subparagraph (A) shall pay dividends at a reasonable rate, as determined by the Corporation, and the rate shall be indexed to obligations issued by the Secretary of the Treasury under subchapter I of chapter 31 of title 31, United States Code.

"(E) PRIORITY.—

"(i) IN GENERAL.—In the event of the liquidation or reorganization of any insured institution with respect to which the Corporation holds capital instruments under this paragraph, the Corporation shall have priority over—

"(I) any claim, other than a claim described in clause (ii), arising out of any equity interest in such insured institution; and

"(II) any right of any holder of an equity interest in such insured institution to participate in future earnings.

"(ii) DIVIDENDS.—

"(I) NO OTHER DIVIDENDS.—No dividends may be paid on any class of equity instruments of any insured institution (other than a capital instrument held by the Corporation) until all dividends, including accumulated unpaid dividends, on the capital instruments are paid.

"(II) PROHIBITION CEASES IF PAYMENT REDEMPTION PAYMENTS AND DIVIDENDS ARE CURRENT.—If all payments on capital instruments held by the Corporation with respect to any insured institution, including redemption payments and dividends, are current, dividends on other classes of equity instruments of such insured institution may be paid, notwithstanding subclause (I).".

SEC. 406. MINIMUM CAPITAL REQUIREMENTS.

(a) FEDERALLY CHARTERED THRIFTS.—Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) is amended by adding at the end thereof the following new subsection:

"(s) MINIMUM CAPITAL REQUIREMENTS.—

"(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Board shall require all associations to achieve and maintain adequate capital by—

"(A) establishing minimum levels of capital for associations; and

"(B) using such other methods as the Board determines to be appropriate.

"(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY BOARD ON CASE-BY-CASE BASIS.—The Board may establish the minimum level of capital for an association at such amount or at such ratio of capital-to-assets as the Board determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

"(3) UNSAFE OR UNSOUND PRACTICE.—In the Board's discretion, the Board may treat the failure of any association to maintain capital at or above the minimum level required by the Board under this subsection as an unsafe or unsound practice within the meaning of subsection (d).

"(4) DIRECTIVE TO INCREASE CAPITAL.—

"(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Board may issue a directive requiring any association which fails to maintain capital at or above the minimum level required by the Board to submit and adhere to a plan for increasing capital which is acceptable to the Board.

"(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under subsection (d)(8) to the same extent and in the same manner as an outstanding order which was issued under subsection (d)(2) and has become final.

"(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Board may—

"(A) consider an association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the approval of the Board for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Board; and

"(B) disapprove any proposal referred to in subparagraph (A) if the Board determines that the proposal would adversely affect the ability of the association to comply with such plan.".

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(t) MINIMUM CAPITAL REQUIREMENTS.—

"(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Corporation shall require all insured institutions to achieve and maintain adequate capital by—

"(A) establishing minimum levels of capital for insured institutions; and

"(B) using such other methods as the Corporation determines to be appropriate.

"(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY CORPORATION ON CASE-BY-CASE BASIS.—The Corporation may establish the minimum level of capital for an insured institution at such amount or at such ratio of capital-to-assets as the Corporation determines to be necessary or appropriate for such insured institution in light of the particular circumstances of the insured institution.

"(3) UNSAFE OR UNSOUND PRACTICE.—In the Corporation's discretion, the Corporation may treat the failure of any insured institution to maintain capital at or above the minimum level required by the Corporation under this subsection as an unsafe or unsound practice within the meaning of subsection (e).

"(4) DIRECTIVE TO INCREASE CAPITAL.—

"(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Corporation may issue a directive requiring any insured institution which fails to maintain capital at or above the minimum level required by the Corporation to submit and adhere to a plan for increasing capital which is acceptable to the Corporation.

"(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under subsection (k) to the same extent and in the same manner as an outstanding order which was issued under subsection (e) and has become final.

"(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Corporation may—

"(A) consider an insured institution's progress in adhering to any plan required under paragraph (4) whenever such insured institution or any affiliate of such insured institution (including any company which controls such insured institution) seeks the approval of the Corporation for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such insured institution's progress in meeting the minimum level of capital required by the Corporation; and

"(B) disapprove any proposal referred to in subparagraph (A) if the Corporation determines that the proposal would adversely affect the ability of the insured institution to comply with such plan.".

SEC. 407. IMPROVEMENTS IN THE SUPERVISORY PROCESS.

(a) ENHANCED FLEXIBILITY IN THE SUPERVISORY PROCESS.—The Federal Home Loan Bank Board (acting as such under the Federal Home Loan Bank Act and in the Board's capacity as the board of trustees of the Federal Savings and Loan Insurance Corporation under section 402(a) of the National Housing Act) shall issue guidelines which provide greater flexibility for supervisory agents, examiners, and other employees and agents of the Board, the Federal Savings

and Loan Insurance Corporation, and the Federal home loan banks in applying regulations, standards, and other requirements of the Board or such Corporation with regard to particular situations or particular thrift institutions.

(b) PARTICULAR GUIDELINES REQUIRED.—The guidelines issued under subsection (a) shall contain the following provisions:

(1) FLEXIBLE APPROVAL PROCESS FOR RENEGOTIATED LOANS.—A provision establishing a flexible procedure for obtaining supervisory approval of the terms of loans renegotiated by thrift institutions if a supervisory agreement is in effect between such institution and the principal supervisory agent of the Federal home loan bank district where such institution is located.

(2) RECOGNITION OF ADDITIONAL FINANCIAL CAPABILITY OF A BORROWER.—A provision permitting examiners and other employees and agents of the Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks to take into account, to the extent consistent with the practices of the Federal banking agencies, other financial resources of a borrower (in addition to the financial assets of the borrower which are pledged to secure a loan) in classifying the assets of the thrift institution which holds a loan made to such borrower or with recourse to the borrower.

(3) APPRAISAL REVIEW.—A provision establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent in reflecting underlying values.

(4) 1-TO-4 FAMILY RESIDENCES.—A provision eliminating the scheduled item system except as such system relates to 1-to-4 family residences.

(c) DEFINITIONS.—For purposes of subsections (a) and (b)—

(1) THRIFT INSTITUTION.—The term "thrift institution" means—

(A) any association (within the meaning given to such term in section 2(d) of the Home Owners' Loan Act of 1933);

(B) any insured institution (within the meaning given to such term in section 401(a) of the National Housing Act); and

(C) any member (within the meaning given to such term in section 2(4) of the Federal Home Loan Bank Act).

(2) BOARD.—The term "Board" means the Federal Home Loan Bank Board.

(3) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(d) NONADVERSARIAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 22 the following new section:

"SEC. 22A. INFORMAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.

"(a) REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Board shall establish an informal review procedure under which any association, insured institution, or member may obtain a review, by the principal supervisory agent for the Federal home loan bank district in which such association, institution, or member is located, of any decision by any examiner or supervisory agent of the Federal home loan bank for such district with respect to—

"(1) the appraisal value of—

"(A) any loan held by the association, insured institution, or member; or

"(B) any property serving as collateral to secure the repayment of any loan (held by the association, institution, or member);

"(2) the classification of any loan held by the association, institution, or member; or

"(3) any requirement imposed on the association, institution, or member to establish or to add to a reserve or allowance for a possible loss on any loan held by such institution.

"(b) STANDARDS FOR REVIEW.—The review procedure established pursuant to subsection (a) shall provide that the principal supervisory agent for the appropriate Federal home loan bank district, after taking into account the report described in subsection (c)(2) by the arbiter (or panel of arbiters), shall approve, modify, or set aside any decision for which a review has been requested on the basis of the supervisory agent's review of all the facts and the regulations applicable to such decision and shall take such action as such agent may determine to be necessary or appropriate in light of such review.

"(c) APPOINTMENT OF INDEPENDENT ARBITER.—The review procedure established pursuant to subsection (a) shall provide for the appointment (by the principal supervisory agent for the appropriate Federal home loan bank district, upon the filing of a request for a review under this section by an association, insured institution, or member) of an independent arbiter (or, upon the request of such association, institution, or member, a panel of independent arbiters) who shall—

"(1) review the decision which is the subject of the review in light of all the facts of the case and the regulations applicable to such determination; and

"(2) report the conclusions and recommendations of the independent arbiter (or the panel) with respect to the decision under review to the principal supervisory agent for the appropriate Federal home loan bank district and the association, insured institution, or member.

"(d) CONSOLIDATION OF REVIEWS OF RELATED DECISIONS.—The principal supervisory agent may consolidate requests for review under this section of related decisions and conduct a single review of all such related decisions.

"(e) 25-DAY ARBITER REVIEW PERIOD; 20-DAY PSA REVIEW PERIOD.—

"(1) ARBITER REVIEW.—The review procedure established pursuant to subsection (a) shall provide that any review described in subsection (c) by an arbiter (or panel of arbiters) shall be completed before the end of the 25-day period beginning on the date the request for the review was filed with the principal supervisory agent.

"(2) REVIEW BY PSA.—The review procedure established pursuant to subsection (a) shall provide that any review by the principal supervisory agent of an arbiter's report described in subsection (c)(2) (or the report of a panel of arbiters) shall be completed before the end of the 20-day period beginning on the date the agent receives such report.

"(3) ONLY BUSINESS DAYS INCLUDED.—Saturdays, Sundays, and holidays shall not be taken into account in determining the periods described in paragraphs (1) and (2).

"(f) CLARIFICATION OF RELATIONSHIP BETWEEN INFORMAL REVIEW AND OTHER AVAILABLE REVIEW.—

"(1) INFORMAL REVIEW NOT EXCLUSIVE.—The informal review procedure established pursuant to subsection (a) for reviewing any decision referred to in such subsection shall be in addition to, and not in lieu of, any other procedure established by law, or any regulation of the Board, which provides for formal administrative or judicial review of such decision.

"(2) ONLY THE ORIGINAL DECISION IS WITHIN SCOPE OF ADMINISTRATIVE AND JUDICIAL REVIEW.—If any association, insured institution, or member seeks administrative or judicial review of any examiner or supervisory agent decision for which such association, insured institution, or member obtained an informal review under the procedure established pursuant to subsection (a), such administrative or judicial review shall be carried out—

"(A) without regard to the fact that such informal review was made; and

"(B) without admitting into evidence, or otherwise taking into account, the findings, recommendations, or conclusions of the principal supervisory agent and the independent arbiter (or the panel of independent arbiters) which conducted the informal review.

"(3) INFORMAL REVIEW NOT SUBJECT TO FORMAL REVIEW.—The findings, recommendations, or conclusions of any principal supervisory agent who conducted a review under the procedure established pursuant to subsection (a) are not decisions which may be subject to review by the Board or any court under any regulation of the Board or any law.

"(g) EXPENSES OF REVIEW BORNE BY ASSOCIATION, INSTITUTION, OR MEMBER.—All reasonable expenses incurred as a direct or indirect result of any review under the procedure established pursuant to subsection (a) shall be paid by the association, insured institution, or member which requested the review.".

SEC. 408. PREVENTION OF INSOLVENCIES.

Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit a report to the Congress containing—

(1) a detailed description of the steps the Board has taken and is planning to take to prevent additional failures of thrift institutions; and

(2) such recommendations for legislation as the Board may determine to be appropriate.

SEC. 409. FEASIBILITY STUDY RELATING TO ESTABLISHMENT OF ASSET HOLDING CORPORATION.

(a) STUDY REQUIRED.—The Federal Home Loan Bank Board shall study the feasibility of establishing an asset holding corporation to relieve thrift institutions of the burden of carrying and maintaining troubled real estate assets by providing for the acquisition of such assets by such corporation.

(b) FACTORS TO BE CONSIDERED.—In studying the feasibility of establishing an asset holding corporation, the Federal Home Loan Bank Board shall—

(1) estimate the cost of establishing and operating such corporation for the purposes intended;

(2) consider whether sufficient capital for the establishment and operation of the corporation can be obtained from the private sector or from the Federal home loan bank system without any Government investment in the corporation;

(3) develop standards for determining the type and condition of real estate assets which would be eligible for acquisition by such corporation and estimate the total value of such real estate; and

(4) develop a proposal for allowing participating thrift institutions to obtain an equity participation in the corporation.

(c) REPORT REQUIRED.—The Federal Home Loan Bank Board shall prepare and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 6 months after the date of the enactment of this Act, a report containing the findings and conclusions of the Board with respect to the study required under subsection (a) and any recommendation of the Board for legislation which the Board determines may be necessary or appropriate.

SEC. 410. NOTICE AND DISAPPROVAL PROCEDURE REQUIRED FOR ALL APPLICATIONS TO THE BANK BOARD.

(a) IN GENERAL.—The Federal Home Loan Bank Board shall promulgate guidelines which provide that with respect to each type of completed application (other than an application under section 408(g) of the National Housing Act) by any person for approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, the application shall be deemed to be approved as of the end of the period prescribed under such guidelines unless the Board or the Federal Savings and Loan Insurance Corporation, as the case may be, approves or disapproves such application before the end of such period.

(b) APPLICATION FOR HOLDING COMPANY INDEBTEDNESS.—Section 408(g) of the National Housing Act (12 U.S.C. 1730a(g)) is amended by adding at the end thereof the following new paragraph:

"(7) Any completed application under this subsection shall be deemed to be approved as of the end of the 60-day period beginning on the date such application was filed, unless the Corporation issues notice of approval or disapproval of the application before the end of such period.".

(c) REPORT TO CONGRESS.—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing the guidelines required to be promulgated under subsection (a).

(d) EFFECTIVE DATE.—The guidelines required to be promulgated under subsection (a) shall take effect at the end of the 60-day period referred to in subsection (c).

SEC. 411. GUIDELINES FOR ASSET DISPOSITION.

Not later than 6 months after the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing appropriate new guidelines which—

(1) prevent the dumping of assets over which it has direct or indirect control; and

(2) the Board shall promulgate at the end of such period.

SEC. 412. EXPANSION OF USE OF UNDERUTILIZED MINORITY THRIFT INSTITUTIONS.

(a) CONSULTATION ON EXPANDED USE.—The Secretary of the Treasury shall consult with the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation on methods for increasing the use of underutilized minority thrift institutions as depositaries or financial agents of Federal agencies.

(b) DESIGNATION OF MINORITY THRIFT INSTITUTIONS INVOLVED IN CAPITAL RECOVERY PROGRAM AS UNDERUTILIZED THRIFT.—If the Federal Home Loan Bank Board approves any plan submitted under regulations prescribed under section 10 of the Home Owners' Loan Act of 1933 (as added by section 404(a) of this title) or section 416 of the National Housing Act (as added by section 404(c) of this title) by any minority institution (as defined in each such section), such minority institution shall be designated by the Board as an underutilized thrift institution for purposes of increasing the use of such association as a depositary or financial agent of other Federal agencies.

(c) REPORT TO CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation shall each submit a report to the Congress on actions taken by such Secretary or agency pursuant to subsection (a) or (b).

(d) THRIFT INSTITUTION DEFINED.—For purposes of this section, the term "thrift institution" has the meaning given to such term in section 407(c)(1).

SEC. 413. AUTHORITY OF INDEPENDENT CONTRACTORS, CONSULTANTS, AND COUNSEL.

(a) FEDERALLY CHARTERED THRIFT INSTITUTIONS.—Section 5(d)(6) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(6)) (relating to appointments of receivers and conservators) is amended by adding at the end thereof the following new subparagraph:

"(E) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of an association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.".

(b) FEDERALLY INSURED STATE CHARTERED THRIFT INSTITUTIONS.—Section 406(b) of the National Housing Act (12 U.S.C. 1730) (relating to involuntary termination of insurance) is amended by adding at the end thereof the following new paragraph:

"(4) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CORPORATION.—The Corporation shall require that any independent contractor, consultant, or counsel employed by the Corporation in connection with the management or liquidation of an insured institution shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the Corporation.".

SEC. 414. EXTENSION OF FORBEARANCE PREVIOUSLY PROVIDED IN THE ACQUISITION OF TROUBLED THRIFT INSTITUTIONS.

Section 408(m)(1)(A) of the National Housing Act (12 U.S.C. 1730a(m)(1)(A)) is amended by adding at the end thereof the following new clause:

"(iv) If, in connection with a merger, consolidation, transfer, or acquisition of an insured institution under this subparagraph before March 31, 1987, forbearance measures have been included in the agreement governing the supervisory action with respect to such transaction, the period of forbearance in such agreement shall be extended for an additional 5 years upon a showing by the acquiring or resulting insured institution that any failure to meet any requirement, restriction, or limitation specified in such agreement with respect to any such forbearance measure is attributable to the assets or liabilities (of the acquired or merged insured institution) which were acquired by or assumed by the acquiring or resulting insured institution.".

SEC. 415. CONGRESSIONAL OVERSIGHT.

(a) BANKING COMMITTEE REVIEW OF PANEL ACTIONS.—The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate shall monitor and review the actions taken by each review panel established pursuant to the amendment made by section 407(d) of this Act.

(b) OTHER CONGRESSIONAL OVERSIGHT.—The Federal Home Loan Bank Board shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, at the end of the 6-month period beginning on the date of the enactment of this title, at the end of the 1-year period beginning on such date, and on an annual basis after the end of such 1-year period, containing—

(1) a description of the Board's existing manpower and talent;

(2) an estimate of the Board's projected manpower and talent needs for the year, including the cost of such projected needs;

(3) a description and explanation of the goals and objectives, of the Board and all its related entities (including the Federal Asset Disposition Association), for the coming year and the management strategies to be employed by such entities in accomplishing such goals and objectives;

(4) a summary of the operations, receipts, expenses, and expenditures, of the Board and all its related entities (including the Federal Asset Disposition Association), during the preceding year; and

(5) a summary of the operations and the aggregate receipts, expenses, and expenditures of any other person not referred to in paragraph (4), including receivers, conservators, accountants, attorneys, and consultants, who is engaged in any activity on behalf of the Board or any other entity which is referred to in such paragraph, to the extent such operations, receipts, expenses, and expenditures are in connection with such activity.

(c) APPEARANCE.—The Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall, before the beginning of each fiscal year, appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to describe and explain each such agency's plans and proposals with respect to administrative expenses for such fiscal year.

(d) GUIDELINES FOR EMPLOYMENT OF OUTSIDE ACCOUNTANTS, ATTORNEYS, CONSERVATORS, AND OTHER CONSULTANTS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing guidelines to improve the management of and control over all outside accountants, attorneys, conservators, consultants, and other persons whose services are employed by the Board, the Federal Savings and Loan Insurance Corporation, the Federal Asset Disposition Association, the principal supervisory agent for any Federal home loan bank district, or any other entity created, owned, or controlled by the Board

in connection with any function for which the Board has direct or indirect regulatory or supervisory responsibility.

SEC. 416. SUNSET.

(a) IN GENERAL.—The following provisions shall cease to be effective on the date that a notice is published in the Federal Register by the Financing Corporation pursuant to subsection (b):

(1) Paragraphs (2), (3), and (5) of—

(A) section 9(a) of the Home Owners' Loan Act of 1933; and

(B) section 415(a) of the National Housing Act,

(as added by subsections (a) and (b), respectively, of section 402 of this title).

(2) Section 10 of the Home Owners' Loan Act of 1933 and section 416 of the National Housing Act (as added by subsections (a) and (b), respectively, of section 404 of this title).

(3) Paragraph (6) of section 406(f) of the National Housing Act (as added by section 405 of this title).

(4) Section 22A of the Federal Home Loan Bank Act (as added by section 407(d) of this title).

(5) Section 411 of this title.

(b) NOTICE OF COMPLETION OF NET NEW BORROWING BY FINANCING CORPORATION.—When the Financing Corporation established pursuant to section 21 of the Federal Home Loan Bank Act has completed all net new borrowing under such section, the Financing Corporation shall publish a notice of such fact in the Federal Register.

(c) SAVINGS PROVISION.—The termination by subsection (a) of the effectiveness of any provision described in such subsection shall not be construed to affect or limit any authority of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation to prescribe any regulation or engage in any activity with respect to any association or insured institution under any other provision of law.

TITLE V—FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS

SEC. 501. SHORT TITLE.

This title may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1987".

SEC. 502. FDIC ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.

(a) GENERAL PROVISIONS.—Section 13(f)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(1)) is amended to read as follows:

"(f) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.—(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank or out-of-State holding company for which the Corporation provides assistance under subsection (c).".

(b) EMERGENCY INTERSTATE ACQUISITIONS OF BANKS IN DANGER OF CLOSING.—Section 13(f)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(3)) is amended to read as follows:

"(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF CLOSING.—

"(A) ACQUISITION OF INSURED BANKS IN DANGER OF CLOSING.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

"(i) an insured bank in danger of closing which has total assets of $500,000,000 or more; or

"(ii) 2 or more affiliated insured banks in danger of closing which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

"(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

"(i) the holding company which controls the affiliated insured banks so acquired; or

"(ii) any other affiliated insured bank.

"(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of closing which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

"(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

"(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

"(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

"(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of closing is located approves the acquisition.

"(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

"(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.".

(c) SPECIAL PROVISIONS APPLICABLE TO EMERGENCY INTERSTATE ACQUISITIONS.—

(1) COORDINATION WITH CERTAIN STATE LAWS.—Section 13(f)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(4)) is amended—

(A) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively;

(B) by amending subparagraph (A) (as so redesignated) to read as follows:

"(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, the constitution of any State, and section 408(e)(3) of the National Housing Act shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized."; and

(C) by adding at the end thereof the following new subparagraphs:

"(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

"(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

"(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

"(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

"(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

"(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d) of the Bank Holding Company Act of 1956 with respect to such holding company.

"(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.".

(2) RECIPROCAL BANK PACTS AND MINORITY BANK OWNERSHIP TAKEN INTO ACCOUNT IN BIDDING PRIORITIES.—Section 13(f)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(6)) is amended—

(A) in subparagraph (B), by striking out clause (ii) and all that follows through clause (iv) and inserting in lieu thereof the following new clauses:

"(ii) Second, between depository institutions of the same type—

"(I) in different States which by statute specifically authorize such acquisitions; or

"(II) in the absence of such statutes, in different States which are contiguous.

"(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

"(iv) Fourth, between depository institutions of different types in the same State.

"(v) Fifth, between depository institutions of different types—

"(I) in different States which by statute specifically authorize such acquisitions; or

"(II) in the absence of such statutes, in different States which are contiguous.

"(vi) Sixth, between depository institutions of different types in different States

other than the States described in clause (v).''; and

(B) by amending subparagraph (C) to read as follows:

''(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).''.

(3) REAFFIRMATION OF THE RULE THAT NO ASSISTANCE IS AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding at the end thereof the following new paragraph:

''(9) NO ASSISTANCE AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—

''(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary of a holding company which is not an insured bank in connection with any acquisition under this subsection.

''(B) INTERMEDIATE HOLDING COMPANY PERMITTED.— This paragraph does not prohibit an intermediate holding company from being a conduit for assistance ultimately intended for an insured bank.''.

(4) REPORTS REQUIRED.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (9) (as added by paragraph (3) of this subsection) the following new paragraph:

''(10) ANNUAL REPORT.—

''(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

''(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

''(i) The number of acquisitions under this subsection.

''(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.''.

(5) DETERMINATION OF TOTAL ASSETS.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (10) (as added by paragraph (4) of this subsection) the following new paragraph:

''(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.''.

(d) BANK IN DANGER OF CLOSING DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended—

(1) by adding at the end thereof the following new subparagraph:

''(D) the term 'bank in danger of closing' means an insured bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

''(i)(I) the bank is not likely to be able to meet the demands of such bank's depositors or pay the obligations of the bank in the normal course of business, and

''(II) there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without Federal assistance; or

''(ii)(I) the bank has incurred or is likely to incur losses that will deplete all or substantially all of the capital of the bank, and

''(II) there is no reasonable prospect for the replenishment of the bank's capital without Federal assistance;'';

(2) by striking out ''and'' at the end of subparagraph (B); and

(3) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon.

(e) ACQUIRE DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (D) (as added by subsection (d) of this section) the following new subparagraph:

''(E) the term 'acquire' means to acquire, directly or indirectly, ownership or control through—

''(i) an acquisition of shares;

''(ii) an acquisition of assets or assumption of liabilities;

''(iii) a merger or consolidation; or

''(iv) any similar transaction;''.

(f) AFFILIATED INSURED BANK DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (E) (as added by subsection (e) of this section) the following new subparagraph:

''(F) the term 'affiliated insured bank' means—

''(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

''(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and''.

(g) SUBSIDIARY DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (F) (as added by subsection (f) of this section) the following new subparagraph:

''(G) the term 'subsidiary' has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.''.

(h) WAIVER OF NOTICE AND HEARING REQUIREMENTS.—

(1) APPLICATION RELATING TO ACQUISITIONS.—Section 3(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(b)) is amended—

(A) by striking out ''(b) Upon'' and inserting in lieu thereof ''(b)(1) NOTICE AND HEARING REQUIREMENTS.—Upon''; and

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

''(2) WAIVER IN CASE OF BANK IN DANGER OF CLOSING.—If the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.''.

(2) APPLICATION RELATING TO NONBANKING ACTIVITIES.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by striking out the semicolon at the end and inserting in lieu thereof a period and the following new sentences: ''If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;''.

(3) EARLY ANTITRUST REVIEW IN CASE OF EMERGENCY ACQUISITION OF FAILING BANK.—Section 11(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)) is amended—

(A) by striking out ''(b) The Board'' and inserting in lieu thereof ''(b) ANTITRUST REVIEW.—

''(1) IN GENERAL.—The Board'';

(B) by moving all that follows 2 ems to the right; and

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

''(2) SECTION 13(f) CASES.—(A) If—

''(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

''(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 13(f) of the Federal Deposit Insurance Act and such acquisition is subject to the approval of the Board under section 3 of this Act,

the Corporation shall immediately notify the Board of such facts.

''(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

''(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

''(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.''.

(i) TECHNICAL AND CONFORMING AMENDMENTS.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) in paragraph (5), by striking out ''to permit''; and

(2) in paragraph (6)(A)—

(A) by striking out ''where the closed bank'' and inserting in lieu thereof ''where the bank''; and

(B) by striking out ''in-State bank holding company'' and inserting in lieu thereof ''in-State holding company''.

SEC. 503. BRIDGE BANKS.

(a) ESTABLISHMENT OF BRIDGE BANKS.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (h) by striking out ''(h) As soon as'' and inserting in lieu thereof ''(h) NEW BANKS.—(1) As soon as'';

(2) by redesignating subsections (i), (j), (k), and (l) as paragraphs (2), (3), (4), and (5) of subsection (h), respectively; and

(3) by inserting after subsection (h)(5) (as redesignated by paragraph (2)) the following new subsection:

''(i) BRIDGE BANKS.—

''(1) ESTABLISHMENT.—When an insured bank is closed, the Corporation, in the Corporation's discretion and subject to the conditions established in paragraph (2), may establish a bridge bank to—

''(A) assume the deposits of the closed bank;

"(B) assume such other liabilities of the closed bank as the Corporation, in the Corporation's discretion, may determine to be appropriate;

"(C) purchase such assets of the closed bank as the Corporation, in the Corporation's discretion, may determine to be appropriate; and

"(D) perform any other temporary function which the Corporation may prescribe in accordance with this Act.

"(2) CONDITIONS.—A bridge bank may be established under paragraph (1) only if the Board of Directors determines that—

"(A) the amount which is reasonably necessary to organize and operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, the closed bank or banks;

"(B) the continued operation of such insured bank is essential to provide adequate banking services in the community where such bank is located; or

"(C) that the continued operation of such insured bank is in the best interest of the depositors of the closed bank and the public.

"(3) TRANSFER OF ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—Upon the organization of a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to the closed insured bank may, subject to the approval of any such transfer by a court of competent jurisdiction, transfer any assets and liabilities of the closed insured bank to the bridge bank.

"(B) INTENT OF CONGRESS RELATING TO CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of the closed bank with respect to which a bridge bank is established, especially creditworthy farmers, small businesses, and households, the Corporation should—

"(i) continue to honor commitments made by the closed bank to creditworthy customers, and

"(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

"(4) ORGANIZATION.—

"(A) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of a bridge bank shall be executed by representatives designated by the Corporation.

"(B) INSURED NATIONAL BANK.—Each bridge bank shall be a national bank and shall be insured from the time of the organization of the bridge bank.

"(C) MANAGEMENT.—Each bridge bank shall be under the management of a board of directors consisting of 5 members appointed by the Board of Directors of the Corporation.

"(5) POWERS OF BRIDGE BANKS.—Each bridge bank established under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

"(A) the Corporation may—

"(i) remove the directors of any bridge bank;

"(ii) fix the compensation of members of the board of directors of any bridge bank; and

"(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (4)(B);

"(B) the Corporation may indemnify the directors of a bridge bank on such terms as the Corporation determines to be appropriate;

"(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to any bridge bank;

"(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to any bridge bank without regard to the amount of the bank's capital or surplus;

"(E) the board of directors of the bridge bank shall elect a chairperson who shall also serve in the position of chief executive officer;

"(F) no bridge bank shall be required to purchase stock of any Federal Reserve bank; and

"(G) the Comptroller of the Currency may waive any requirement for a fidelity bond.

"(6) CAPITAL.—

"(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to—

"(i) issue capital stock on behalf of any bridge bank established under this subsection; or

"(ii) purchase any capital stock of any bridge bank.

"(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate.

"(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of any bridge bank to be issued and offered for sale on such terms and conditions as the Corporation determines to be appropriate and in an amount sufficient (in the discretion of the Corporation) to make possible the conduct of the business of the bridge bank on a sound basis.

"(7) NO FEDERAL STATUS.—

"(A) AGENCY STATUS.—A bridge bank is not an agency, establishment, or instrumentality of the United States.

"(B) EMPLOYEE STATUS.—Directors, officers, employees, or agents of the bridge bank are not officers or employees of the United States for purposes of title 5, United States Code, or any other provision of law.

"(8) ASSISTANCE AUTHORIZED.—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate the sale or merger of the bridge bank with another insured depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to a closed insured bank.

"(9) ACQUISITION BY OUT-OF-STATE BANK HOLDING COMPANY.—Any depository institution, including an out-of-State bank, or any out-of-State holding company may acquire and retain the shares or assets of, or otherwise acquire and retain a bridge bank which has assumed the insured deposits of one or more closed banks which had total assets aggregating $500,000,000 or more (determined in the manner provided in section 13(f)(11) at the time such insured bank was closed) in the same manner and to the same extent as such depository institution or such out-of-State holding company may acquire a closed insured bank under section 13(f)(2).

"(10) TERMINATION OF BRIDGE BANK.—

"(A) IN GENERAL.—A bridge bank shall terminate upon the occurrence of the earliest of the following:

"(i) The bridge bank merges or consolidates with another bank that is not a bridge bank.

"(ii) The bridge bank sells all or substantially all of the stock of the bridge bank other than to the Corporation or to another bridge bank.

"(iii) A holding company or another bank that is not a bridge bank assumes all, or substantially all of the deposits or other liabilities of a bridge bank.

"(iv) A period of 2 years following the date the bridge bank was organized expires without any other disposition of the assets and liabilities of the bank having occurred.

"(B) EXTENSION ALLOWED FOR 1 YEAR.—If the Board of Directors finds, after consultation with the Comptroller of the Currency, that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank and the public, the Corporation may extend the time period specified in subparagraph (A)(iv) for not to exceed one year.

"(11) 2 OR MORE BANKS.—The Corporation, in the Corporation's discretion, may establish a bridge bank under this subsection to assume the deposits of, assume any other liabilities of, and purchase any assets of 2 or more closed banks.".

(b) DEFINITIONS.—Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i) NEW BANK AND BRIDGE BANK DEFINED.—

"(1) NEW BANK.—The term 'new bank' means a new national bank, other than a bridge bank, organized by the Corporation in accordance with section 11(h).

"(2) BRIDGE BANK.—The term 'bridge bank' means a new national bank organized by the Corporation in accordance with section 11(i).".

SEC. 504. CONVERSIONS.

(a) AMENDMENT TO THE NATIONAL HOUSING ACT.—Section 403 of the National Housing Act (12 U.S.C. 1726) is amended by adding at the end thereof the following:

"(e) If, upon application, and pursuant to a plan of conversion to an institution of a type eligible to be an insured institution, the Corporation, in its discretion, determines to grant insurance of accounts to a savings bank that is an insured bank (as the term 'insured bank' is defined in section 3(h) of the Federal Deposit Insurance Act), such insurance shall become effective at such time as the Corporation stipulates, at which time such institution automatically shall lose its status as such an insured bank. No change of deposit insurance agencies from the Federal Deposit Insurance Corporation to the Corporation shall be treated, for the purposes of section 18(i) of the Federal Deposit Insurance Act, as involving a conversion to a noninsured bank or institution, except that the Corporation shall provide the Federal Deposit Insurance Corporation with notification of any application that, if granted, would involve such a change of deposit insurance agencies, shall consult with the Corporation before disposing of the application, and shall provide the Federal Deposit Insurance Corporation with notification of the determination with respect to such application.".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) SECTION 18(C) APPLICABILITY.—Section 18(c)(12) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(12)) is amended to read as follows:

"(12) The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.".

(2) SECTION 18(i) APPLICABILITY.—Section 18(i) of such Act is amended by adding at the end thereof the following:

"(5) Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 403(e) of the National Housing Act (12 U.S.C. 1726(e)).".

SEC. 505. FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES NOT SUBJECT TO APPORTIONMENT OF FUNDS PROVISIONS.

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by adding at the end thereof the following:

"(9) APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

(b) THE COMPTROLLER OF THE CURRENCY.—The second paragraph of section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by inserting after the fifth sentence the following: "Such funds shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

(c) THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.—Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by adding at the end thereof the following:

"(k) APPORTIONMENT.—Notwithstanding any other provision of law, amounts received by the Corporation pursuant to any assessment under this Act, deposits required under this section and any other monies received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

(d) THE FEDERAL HOME LOAN BANK BOARD.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 19 (12 U.S.C. 1439) the following:

"SEC. 19A. APPORTIONMENT.

"Notwithstanding any other provision of law, amounts received pursuant to any assessment under this Act and any other monies received by the Board shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

(e) THE NATIONAL CREDIT UNION ADMINISTRATION.—Title I of the Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended by adding at the end thereof the following:

"SEC. 128. APPORTIONMENT.

"Notwithstanding any other provision of law, funds received by the Board pursuant to any method provided by this Act, and interest, dividend, or other income thereon, shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

SEC. 506. FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES NOT SUBJECT TO SEQUESTRATION.

(a) IN GENERAL.—Paragraph (1) of section 255(g) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by inserting after the item relating to compensation of the President the following new item:

"Comptroller of the Currency;";

(2) by inserting after the item relating to the exchange stabilization fund the following new items:

"Federal Deposit Insurance Corporation;

"Federal Home Loan Bank Board;

"Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;"; and

(3) by inserting after the item relating to intragovernmental funds the following new items:

"National Credit Union Administration;

"National Credit Union Administration, central liquidity facility;

"National Credit Union Administration, credit union share insurance fund;".

(b) CERTAIN EXPENSES.—Section 256(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of law, this subsection shall not apply with respect to the following:

"(A) Comptroller of the Currency.

"(B) Federal Deposit Insurance Corporation.

"(C) Federal Home Loan Bank Board.

"(D) Federal Savings and Loan Insurance Corporation.

"(E) National Credit Union Administration.

"(F) National Credit Union Administration, central liquidity facility.".

SEC. 507. LIQUIDATION PROCEEDINGS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (i) (as added by section 503(a)(3) of this title) the following new subsection:

"(j) CONDITIONS APPLICABLE TO LIQUIDATION PROCEEDINGS.—

"(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a closed bank.

"(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

"(3) GUIDELINES REQUIRED.—The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.".

SEC. 508. CAPITAL POOLS.

(a) FINDINGS.—The Congress hereby finds that—

(1) the Federal Deposit Insurance Corporation has the statutory authority to engage in open bank assistance for failing banks under section 13(c) of the Federal Deposit Insurance Act to minimize losses to the insurance fund and to provide for the stability of the community;

(2) communities in depressed regions of the Nation have had increasing difficulty in raising capital to infuse into locally operated, failing banks;

(3) States have the authority to establish capital pools to supplement Federal Deposit Insurance Corporation funds and outside capital in arranging open banks assistance plans; and

(4) it is not in the public interest to have a fire sale of assets acquired by the Federal Deposit Insurance Corporation as a part of their acquisitions of nonperforming loans of failed banks.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Federal Deposit Insurance Corporation should—

(1) exercise its discretionary authority to work with States which authorize capital pools described in subsection (a)(3) to save community banks during this time of great economic distress in certain regions of the country; and

(2) use its discretionary authority to negotiate sale of loans in the Corporation's capacity as receiver for a closed insured bank to banks in the area in which such closed bank is located in order to prevent further asset devaluation.

SEC. 509. PERMANENT EXTENSION OF CERTAIN TEMPORARY PROVISIONS OF LAW; 5 YEAR EXTENSION OF NET WORTH CERTIFICATES.

(a) PERMANENT EXTENSION.—Part D of title I of the Garn-St Germain Depository Institutions Act of 1982 is repealed.

(b) 5-YEAR EXTENSION OF NET WORTH CERTIFICATES.—Section 206(a) of such Act (12 U.S.C. 1729 note) is amended by striking out "October 13, 1986" and inserting in lieu thereof "October 13, 1991".

(c) PRIOR AMENDMENTS NOT EFFECTIVE.—No amendment made by part D of title I or section 206 of the Garn-St Germain Depository Institutions Act of 1982, as in effect before the date of the enactment of this Act, to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act and any such provision of law shall be in effect as if no such amendment had been made before such date of enactment.

TITLE VI—EXPEDITED FUNDS AVAILABILITY

SEC. 601. SHORT TITLE.

This title may be cited as the "Expedited Funds Availability Act".

SEC. 602. DEFINITIONS.

For purposes of this title—

(1) ACCOUNT.—The term "account" means a demand deposit account or other similar transaction account at a depository institution.

(2) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(3) BUSINESS DAY.—The term "business day" means any day other than a Saturday, Sunday, or legal holiday.

(4) CASH.—The term "cash" means United States coins and currency, including Federal Reserve notes.

(5) CASHIER'S CHECK.—The term "cashier's check" means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution.

(6) CERTIFIED CHECK.—The term "certified check" means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) CHECK.—The term "check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) CHECK CLEARINGHOUSE ASSOCIATION.—The term "check clearinghouse association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) CHECK PROCESSING REGION.—The term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) CONSUMER ACCOUNT.—The term "consumer account" means any account used primarily for personal, family, or household purposes.

(11) DEPOSITORY CHECK.—The term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) LOCAL ORIGINATING DEPOSITORY INSTITUTION.—The term "local originating depository institution" means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) NONCASH ITEM.—The term "noncash item" means—

(A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) NONLOCAL ORIGINATING DEPOSITORY INSTITUTION.—The term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution.

(16) PROPRIETARY ATM.—The term "proprietary ATM" means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) ORIGINATING DEPOSITORY INSTITUTION.—The term "originating depository institution" means the branch of a depository institution on which a check is drawn.

(18) NONPROPRIETARY ATM.—The term "nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

(19) PARTICIPANT.—The term "participant" means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) RECEIVING DEPOSITORY INSTITUTION.—The term "receiving depository institution" means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) STATE.—The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) TELLER'S CHECK.—The term "teller's check" means any check issued by a depository institution and drawn on another depository institution.

(23) UNITED STATES.—The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) UNIT OF GENERAL LOCAL GOVERNMENT.—The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) WIRE TRANSFER.—The term "wire transfer" has such meaning as the Board shall prescribe by regulations.

SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.

(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—

(1) CASH DEPOSITS; WIRE TRANSFERS.—Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued.

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first $100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) PERMANENT SCHEDULE.—

(1) AVAILABILITY OF FUNDS DEPOSITED BY LOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) AVAILABILITY OF FUNDS DEPOSITED BY NONLOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 P.M. CASH AVAILABILITY.—Not more than $400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than $400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) $100 AVAILABILITY.—Any amount available for withdrawal under this paragraph

shall be in addition to the amount available under subsection (a)(2)(D).

(4) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) TEMPORARY SCHEDULE.—

(1) AVAILABILITY OF LOCAL CHECKS.—

(A) IN GENERAL.—Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) TIME PERIOD ADJUSTMENT FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(i) IN GENERAL.—Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 P.M. CASH AVAILABILITY.—Not more than $400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than $400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) $100 AVAILABILITY.—Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) AVAILABILITY OF NONLOCAL CHECKS.—Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) TIME PERIOD ADJUSTMENTS.—

(1) REDUCTION GENERALLY.—Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) EXTENSION FOR CERTAIN DEPOSITS IN NONCONTIGUOUS STATES OR TERRITORIES.—Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) DEPOSITS AT AN ATM.—

(1) NONPROPRIETARY ATM—TEMPORARY SCHEDULE.—

(A) IN GENERAL.—Not more than 6 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) DEPOSITS DESCRIBED IN THIS PARAGRAPH.—A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(C) APPLICABILITY.—This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine after August 31, 1988, and before September 1, 1990.

(2) NONPROPRIETARY ATM—PERMANENT SCHEDULE.—

(A) CASH, GOVERNMENT CHECKS, AND LOCAL CHECKS.—Not more than 1 business day shall intervene between the business day on which a deposit described in paragraph (1)(B) (i), (ii), or (iii) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) NONLOCAL CHECKS.—Not more than 4 business days shall intervene between the business day a deposit described in paragraph (1)(B)(iv) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(C) DETERMINATION OF "LOCAL ORIGINATING DEPOSITORY INSTITUTION".—For the purpose of this paragraph, a check is drawn on a local originating depository institution if that depository institution is located in the same check processing region as the receiving nonproprietary ATM.

(D) APPLICABILITY.—This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine on or after September 1, 1990.

(3) PROPRIETARY ATM—TEMPORARY AND PERMANENT SCHEDULES.—The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(4) STUDY AND REPORT ON ATM'S.—The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) CHECK RETURN; NOTICE OF NONPAYMENT.—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

SEC. 604. SAFEGUARD EXCEPTIONS.

(a) NEW ACCOUNTS.—Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

(1) NEXT BUSINESS DAY AVAILABILITY OF CASH AND CERTAIN ITEMS.—Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) AVAILABILITY OF OTHER ITEMS.—In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraphs (1) and (2) of section 603(e).

(3) LIMITATION RELATING TO CERTAIN CHECKS IN EXCESS OF $5,000.—In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds $5,000—

(A) paragraph (1) shall apply only with respect to the first $5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) LARGE OR REDEPOSITED CHECKS; REPEATED OVERDRAFTS.—The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (b), (c), or (e) of section 603 for—

(1) the amount of deposits by one or more checks that exceeds the amount of $5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—In accordance with regulations which the Board shall prescribe, subsections (a)(2)(F), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) BASIS FOR DETERMINATION.—No determination under this subsection may be based on any class of checks or persons.

(3) OVERDRAFT FEES.—If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) COMPLIANCE.—Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) EMERGENCY CONDITIONS.—Subject to such regulations as the Board may prescribe, subsections (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) PREVENTION OF FRAUD LOSSES.—

(1) IN GENERAL.—The Board may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) SUNSET PROVISION.—No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) REPORT TO CONGRESS.—

(A) NOTICE OF EACH SUSPENSION.—Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS OF REPORT.—Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) NOTICE OF EXCEPTION; AVAILABILITY WITHIN REASONABLE TIME.—

(1) IN GENERAL.—If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the day the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) TIME FOR NOTICE.—The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(3) SUBSEQUENT DETERMINATIONS.—If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

SEC. 605. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) PREPRINTED DEPOSIT SLIPS.—All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) MAILING OF NOTICE.—

(1) FIRST MAILING AFTER ENACTMENT.—In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) SUBSEQUENT CHANGES.—A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) UPON REQUEST.—Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) POSTING OF NOTICE.—

(1) SPECIFIC NOTICE AT MANNED TELLER STATIONS.—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) GENERAL NOTICE AT AUTOMATED TELLER MACHINES.—In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) NOTICE OF INTEREST PAYMENT POLICY.—If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) MODEL DISCLOSURE FORMS.—

(1) PREPARED BY BOARD.—The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) USE OF FORMS TO ACHIEVE COMPLIANCE.—A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) VOLUNTARY USE.—Nothing in this title requires the use of any such model form or clause prescribed by the Board under this subsection.

(4) NOTICE AND COMMENT.—Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 606. PAYMENT OF INTEREST.

(a) IN GENERAL.—Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) SPECIAL RULE FOR CREDIT UNIONS.—Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 605(e).

(c) EXCEPTION FOR CHECKS RETURNED UNPAID.—No provision of this title shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

SEC. 607. MISCELLANEOUS PROVISIONS.

(a) AFTER-HOURS DEPOSITS.—For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) AVAILABILITY AT START OF BUSINESS DAY.—Except as provided in subsections (b)(3) and (c)(1)(B) of section 603, if any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) EFFECT ON POLICIES OF DEPOSITORY INSTITUTIONS.—No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) PROHIBITION ON FREEZING CERTAIN FUNDS IN AN ACCOUNT.—In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) EMPLOYEE TRAINING ON AND COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE.—Each depository institution shall—

(1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this title) of the requirements of this title; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

SEC. 608. EFFECT ON STATE LAW.

(a) IN GENERAL.—Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) OVERRIDE OF CERTAIN STATE LAWS.—Except as provided in subsection (a), this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

SEC. 609. REGULATIONS AND REPORTS BY BOARD.

(a) IN GENERAL.—After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) REGULATIONS RELATING TO IMPROVEMENT OF CHECK PROCESSING SYSTEM.—In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks,

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) REPORTS.—

(1) IMPLEMENTATION PROGRESS REPORTS.—

(A) REQUIRED REPORTS.—The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) CONTENTS OF REPORT.—Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) EVALUATION OF TEMPORARY SCHEDULE REPORT.—

(A) REPORT REQUIRED.—The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) CONTENTS OF REPORT.—Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) COMPTROLLER GENERAL EVALUATION REPORT.—Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) CONSULTATION.—In prescribing regulations under subsections (a) and (b), the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) ELECTRONIC CLEARINGHOUSE STUDY.—

(1) STUDY REQUIRED.—The Board shall study the feasibility of modernizing and accelerating the check payment system

through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) CONSULTATION; FACTORS TO BE STUDIED.—In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) REPORT REQUIRED.—The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

SEC. 610. ADMINISTRATIVE ENFORCEMENT.

(a) ADMINISTRATIVE ENFORCEMENT.—Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(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 section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

(b) ADDITIONAL POWERS.—

(1) VIOLATION OF THIS TITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of this section 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.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) ENFORCEMENT BY THE BOARD.—

(1) IN GENERAL.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) ADDITIONAL REMEDY.—If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 605(d)(2) or 609(c),

has failed to comply with any requirement imposed by this title or by the Board under this title, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) PROCEDURAL RULES.—The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

SEC. 611. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be 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 depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; 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) CLASS ACTION AWARDS.—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) BONA FIDE ERRORS.—

(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the 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.

(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this title is not a bona fide error.

(d) JURISDICTION.—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 after the date of the occurrence of the violation involved.

(e) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) AUTHORITY TO ESTABLISH RULES REGARDING LOSSES AND LIABILITY AMONG DEPOSITORY INSTITUTIONS.—The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

SEC. 612. PARITY IN CLEARING.

(a) IN GENERAL.—Section 11A of the Federal Reserve Act (12 U.S.C. 248a) is amended by adding at the end thereof the following:

"(e) All depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)), may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 19(b)(1) (12 U.S.C. 461(b)(1)) from other depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)) or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this title.

SEC. 613. EFFECTIVE DATES.

(a) DATE OF ENACTMENT.—Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) 1 YEAR AFTER DATE OF ENACTMENT.—Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

TITLE VII—CREDIT UNION AMENDMENTS

SEC. 701. SHORT TITLE.

This title may be cited as the "Credit Union Amendments of 1987".

SEC. 702. SECOND MORTGAGE AND HOME IMPROVEMENT LOANS.

Section 107(5)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(ii)) is amended by striking out "fifteen years" and all that follows and inserting in lieu thereof "15 years or any longer term which the Board may allow;".

SEC. 703. OWNERSHIP INTEREST.

Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) is amended by inserting ", representing equity," after "payments".

SEC. 704. FAITHFUL PERFORMANCE.

(a) FINANCIAL OFFICER.—Section 112 of the Federal Credit Union Act (12 U.S.C. 1761a) is amended by striking out the third sentence and inserting in lieu thereof the following: "The board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 113(2) of this Act.".

(b) ADEQUATE FIDELITY COVERAGE.—Section 113 of the Federal Credit Union Act (12 U.S.C. 1761b) is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the Board;".

SEC. 705. MEMBERSHIP OFFICERS.

Section 113(1) of the Federal Credit Union Act (12 U.S.C. 1761b(1)) is amended by striking out "of the board of directors" and inserting in lieu thereof "of the credit union".

SEC. 706. NONPARTICIPATION.

Section 118 of the Federal Credit Union Act (12 U.S.C. 1764) is amended—

(1) by striking out "Subject to" in subsection (a) and inserting in lieu thereof "Except as provided in"; and

(2) by inserting "and enforce" after "adopt" in subsection (b).

SEC. 707. PROPERTY ACQUISITION FLEXIBILITY.

Section 120(i)(2) of the Federal Credit Union Act (12 U.S.C. 1766(i)(2)) is amended—

(1) by inserting after "reimbursement," the following: "acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States,"; and

(2) by inserting after "this Act" the following: ", in accordance with the rules and regulations or policies established by the Board not inconsistent with this Act".

SEC. 708. TREATMENT OF NCUAB FUNDS.

Title I of the Federal Credit Union Act is amended by adding at the end thereof the following:

"SEC. 129. TRUST FUND.

"Notwithstanding any other provision of law, all moneys of the Board shall be treated as trust funds for the purpose of section 256(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. This section is effective for fiscal year 1986 and every fiscal year thereafter.".

SEC. 709. TECHNICAL AND CLARIFYING AMENDMENTS; REMOVAL AND PROHIBITION AUTHORITY.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended—

(1) in paragraph (1), by striking out "director, officer, or committee member" each time it appears and inserting in lieu thereof "director, officer, committee member, or employee";

(2) in paragraph (2), by striking out "director, officer, or committee member" each place it appears and inserting in lieu thereof "director, officer, committee member, or employee";

(3) in paragraph (2), by striking out "any other person" and inserting in lieu thereof "any agent or other person"; and

(4) in paragraph (2), by inserting "employee, agent," before "or other person".

SEC. 710. EFFECT OF REMOVAL OR SUSPENSION.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by adding at the end thereof the following:

"(7)(A) Any person who, pursuant to this subsection, is removed, suspended, or prohibited from participation in the conduct of the affairs of an insured credit union shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of any insured institution, any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, and any savings and loan holding company or subsidiary of a savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration without the prior written approval of the appropriate Federal regulatory agency.

"(B) As used in subsection (g), the term 'insured institution' means an insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.".

SEC. 711. IMPOSITION OF CONSERVATORSHIP.

Section 206(h)(1) of the Federal Credit Union Act (12 U.S.C. 1786(h)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(C) there is a willful violation of a cease-and-desist order which has become final; or

"(D) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board.".

SEC. 712. REDUCTION IN STATE COMMENT WAITING PERIOD.

Section 206(h)(2)(B) of the Federal Credit Union Act (12 U.S.C. 1786(h)(2)(B)) is amended by striking out "ninety" and inserting in lieu thereof "30".

SEC. 713. AUTHORITY AS CONSERVATOR.

Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following:

"(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.".

SEC. 714. LIQUIDATION PROCEEDINGS.

(a) APPLICATION FOR SHOW CAUSE ORDER.—Section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end thereof the following:

"(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.".

(b) LIQUIDATIONS SUBJECT TO REGULATION OF THE BOARD.—Section 208(c) of the Federal Credit Union Act (12 U.S.C. 1788(c)) is redesignated as subsection (j) of section 207 (12 U.S.C. 1787) and is amended by striking out "subject to the regulation of the court or other public body having jurisdiction over the matter" and inserting in lieu thereof "subject only to the regulation of the Board, or, in cases where the Board has been appointed liquidating agent solely by a public authority having jurisdiction over the matter other than said Board, subject only to the regulation of such public authority".

(c) CONFORMING AMENDMENT.—Section 208(d) of the Federal Credit Union Act (12 U.S.C. 1788(d)) is redesignated as section 208(c).

SEC. 715. TRANSFER OF FTC JURISDICTION TO NCUAB.

(a) IN GENERAL.—

(1) Sections 5(a)(2) and 6(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2) and 46(a) are amended by inserting immediately after "section 18(f)(3)," the following: "Federal credit unions described in section 18(f)(4),".

(2) Section 6(b) of the Federal trade Commission Act (15 U.S.C. 46(b)) is amended by inserting immediately after "section 18(f)(3)," the following "Federal credit unions described in section 18(f)(4),".

(b) INVESTIGATIONS OF FOREIGN TRADE CONDITIONS; REPORTS.—The second proviso in section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended—

(1) by inserting immediately after "section 18(f)(3)," the following: "Federal credit unions described in section 18(f)(4),"; and

(2) by inserting immediately after "in business as a savings and loan institution," the following: "in business as a Federal credit union,".

(c) REGULATIONS TO BE PRESCRIBED BY NCUAB.—

(1) The second sentence of section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended by inserting immediately after "paragraph (3))" the following: "and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))".

(2) The last sentence of section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(A) by striking "either such" and inserting in lieu thereof "any such";

(B) by inserting "or Federal credit unions described in paragraph (4)," immediately after "paragraph (3)," each place it appears therein; and

(C) by inserting immediately after "with respect to banks" the following: ", savings and loan institutions or Federal credit unions".

(3) Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting immediately after paragraph (3) the following:

"(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal

Credit Union Act (12 U.S.C. 1766 and 1786).".

SEC. 716. ASSETS WHICH MAY BE PLEDGED.

(a) IN GENERAL.—Section 121 of the Federal Credit Union Act (12 U.S.C. 1767) is amended by adding at the end thereof the following new subsection:

"(b) Any Federal credit union, upon the deposit with it of any funds by the Federal Government, an Indian tribe, or any State or local government or political subdivision thereof as otherwise authorized by this Act, is authorized to pledge any of its assets securing the payment of the funds so deposited.".

(b) CONFORMING AMENDMENT.—Section 121 of the Federal Credit Union Act (12 U.S.C. 1767) is amended by striking out "Each" in the first sentence and inserting in lieu thereof "(a) Each".

TITLE VIII—LOAN LOSS AMORTIZATION

SEC. 801. LOAN LOSS AMORTIZATION FOR AGRICULTURAL BANKS.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end thereof the following:

"(j) LOAN LOSS AMORTIZATION FOR CERTAIN BANKS.—

"(1) ELIGIBILITY.—The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

"(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

"(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

"(2) SEVEN-YEAR LOSS AMORTIZATION.—(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

"(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

"(3) REGULATIONS.—Not later than 90 days after the date of enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

"(4) DEFINITIONS.—As used in this subsection—

"(A) the term 'agricultural bank' means a bank—

"(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

"(ii) which is located in an area the economy of which is dependent on agriculture;

"(iii) which has assets of $100,000,000 or less; and

"(iv) which has—

"(I) at least 25 percent of its total loans in qualified agricultural loans; or

"(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

"(B) the term 'qualified agricultural loan' means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

"(5) MAINTENANCE OF PORTFOLIO.—As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.".

TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS

SEC. 901. REAFFIRMATION OF SECURITY OF FUNDS DEPOSITED IN FEDERALLY INSURED DEPOSITORY INSTITUTIONS.

(a) FINDINGS.—The Congress finds and declares that—

(1) since the 1930's, the American people have relied upon Federal deposit insurance to ensure the safety and security of their funds in federally insured depository institutions; and

(2) the safety security of such funds is an essential element of the American financial system.

(b) SENSE OF CONGRESS.—In view of the findings and declarations contained in subsection (a), it is the sense of the Congress that it should reaffirm that deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States.

TITLE X—GOVERNMENT CHECKS

SEC. 1001. REPORT ON DIFFICULTY IN CASHING TREASURY CHECKS.

Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the extent to which individuals who receive Treasury checks have difficulty cashing such checks.

SEC. 1002. TIME LIMIT ON PAYMENT OF TREASURY CHECKS.

Section 3328 of title 31, United States Code, is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) TIME LIMIT ON TREASURY CHECKS.—

"(1) IN GENERAL.—Except as provided in sections 3329 and 3330 of this title—

"(A) the Secretary shall not be required to pay a Treasury check issued on or after the effective date of this section unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

"(B) the Secretary shall not be required to pay a Treasury check issued before the effective date of this section unless it is negotiated to a financial institution within 12 months after such effective date.

"(2) DEFERRAL PENDING SETTLEMENT.—Notwithstanding the time limitations imposed by paragraph (1), if the Secretary is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Secretary may defer payment or such check until the Comptroller General settles the question.

"(3) Nothing in this subsection shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued."; and

(2) by adding at the end thereof the following:

"(f) AUTHORITY TO DECLINE PAYMENT.—Nothing in this section limits the authority of the Secretary to decline payment of a Treasury check after first examination thereof at the Treasury.".

SEC. 1003. CANCELLATION OF TREASURY CHECKS.

Chapter 33 of title 31, United States Code, is amended by adding at the end of subchapter II the following new section:

"§ 3334. Cancellation and Proceeds Distribution of Treasury Checks

"(a) IN GENERAL.—(1) The Secretary shall provide monthly to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency on or after such effective date that have not been paid and have become more than 12 months old during the preceding month, beginning with the fourteenth month following the effective date of this section.

"(2) Such checks shall be canceled by the Secretary and the proceeds thereof shall be returned to the agency concerned and credited to the appropriation or fund account initially charged for the payment.

"(b) CHECKS ISSUED BEFORE EFFECTIVE DATE.—(1) Not later than 18 months after the effective date of this section, the Secretary shall identify and cancel all Treasury checks issued before such effective date that have not been paid in accordance with section 3328 of this title.

"(2) The proceeds from checks canceled pursuant to paragraph (1) shall be applied to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of the Treasury on behalf of all payment certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

"(c) NO EFFECT ON UNDERLYING OBLIGATION.—Nothing in this section shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.".

SEC. 1004. LIMITATION ON RECLAMATION ACTIONS AND CLAIMS.

(a) IN GENERAL.—Section 3712(a) of title 31, United States Code, is amended to read as follows:

"(a) CLAIMS OVER FORGED OR UNAUTHORIZED ENDORSEMENTS.—

"(1) PERIOD FOR CLAIMS.—If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement, the Secretary may reclaim the amount of such check from the presenting bank or any other endorser that has breached its guarantee of endorsements prior to—

"(A) the end of the 1-year period beginning on the date of payment; or

"(B) the expiration of the 180-day period beginning on the close of the period described in subparagraph (A) if a timely claim is received under section 3702.

"(2) CIVIL ACTIONS.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce the liability of an endorser, transferor, depository, or

fiscal agent on a forged or unauthorized signature or endorsement on, or a change in, a check or warrant issued by the Secretary of the Treasury, the United States Postal Service, or any disbursing official or agent not later than 1 year after a check or warrant is presented to the drawee for payment.

"(B) If the United States has given an endorser written notice of a claim against the endorser within the time allowed by subparagraph (A), the 1-year period for bringing a civil action on that claim under subparagraph (A) shall be extended by 3 years.

"(3) EFFECT ON AGENCY AUTHORITY.—Nothing in this subsection shall be construed to limit the authority of any agency under subchapter II of chapter 37 of this title.".

(b) CLAIMS PRESENTED TO AGENCIES.—Section 3702(c) of title 31, United States Code, is amended to read as follows:

"(c) ONE-YEAR LIMIT FOR CHECK CLAIMS.—(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later.

"(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.".

SEC. 1005. REGULATIONS.

The Secretary of the Treasury may prescribe such rules, regulations, and procedures as the Secretary deems necessary to implement the amendments made by sections 1002, 1003, and 1004, including the recertification of Treasury checks which have been canceled or for which a claim has been asserted or barred.

SEC. 1006. EFFECTIVE DATE.

The amendments made by sections 1002, 1003, and 1004 shall become effective 6 months after the date of enactment of this Act or on such later date as the Secretary of the Treasury may prescribe in regulations.

TITLE XI—INTEREST TO CERTAIN DEPOSITORS

SEC. 1101. INTEREST TO CERTAIN DEPOSITORS.

(a) PAYMENT OF INTEREST REQUIRED.—Notwithstanding any other provision of law, the Federal Deposit Insurance Corporation shall pay interest in accordance with the requirements of subsection (b) on nonnegotiable certificates (commonly referred to as "yellow certificates") which—

(1) were issued by the Golden Pacific National Bank of New York, New York, before such bank was declared to be insolvent by the Comptroller of the Currency on June 21, 1985; and

(2) have been determined to be insured deposits (as such term is defined in section 3(m)(1) of the Federal Deposit Insurance Act) in any judicial action or agency proceeding.

(b) COMPUTATION OF INTEREST.—Interest required to be paid under subsection (a) with respect to any certificate described in such subsection shall be computed—

(1) on the principal amount of that portion of such certificate which was determined to be an insured deposit;

(2) at the statutory rate of interest in effect under the law of the State of New York; and

(3) for the period beginning on June 21, 1985, and ending on the date on which the holder of such certificate, or the holder's representative, receives the payment of deposit insurance on account of such certificate from the Federal Deposit Insurance Corporation.

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1201. HIGH YIELD BOND STUDY.

(a) IN GENERAL.—The Comptroller General, in consultation with the Securities and Exchange Commission, the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, the Secretary of the Treasury, and the Secretary of Labor shall study on a comparative basis to other types of investments made by federally insured institutions the issuance of and investment in high yield, noninvestment grade bonds during the 5 years prior to the date of enactment of this Act, including—

(1) the identity and rating (as determined by Moody's, Standard and Poor's, or other nationally recognized bond rating house) of the issuers of these bonds;

(2) the identity of the major purchasers of these bonds, including but not limited to federally insured depository institutions;

(3) the percentage of the total amount of high yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

(4) the identity of the purchasers including, but not limited to, federally insured depository institutions that invest in high yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

(5) the purposes for which high yield, noninvestment grade bonds are issued other than for financing corporate takeovers;

(6) a summary and analysis of the adequacy of current State and Federal laws that regulate investment in high yield, noninvestment grade bonds, by investors including, but not limited to, federally insured depository institutions and pension funds; and

(7) a review of the impact of the issuance of and investment in high yield, noninvestment grade bonds upon corporate debt as it relates to Federal monetary policy.

(b) OTHER TYPES OF DIRECT INVESTMENT.—In preparing this study, the Comptroller General, in consultation with the aforementioned Federal agencies, shall also examine all other types of direct investments made by Federally insured institutions and the effect these investments have had on Federal insurance funds.

(c) PUBLIC HEARING.—In addition to the collection of information through surveys, public document review, interviews, and other information-gathering methods, at least one joint public hearing shall be held during the course of conducting the study.

(d) REPORTING DATE.—The Comptroller General shall transmit a report containing the results of the study under this section to the Congress not later than 6 months after the date of enactment of this Act.

SEC. 1202. STUDY OF COMPETITIVE ISSUES IN THE PAYMENTS MECHANISM.

(a) IN GENERAL.—The Comptroller General, in coordination and consultation with the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the Federal Reserve System's exemption from the imposition of presentment fees;

(2) the impact of the imposition of presentment fees on the efficiency of the check collection system; and

(3) whether the Federal Reserve System requires check clearinghouses to provide services to Federal Reserve banks and whether Federal Reserve banks should pay check clearinghouses for any such services.

(b) REPORTING DATE.—The Comptroller General shall submit its report to Congress not later than 6 months after the date of enactment of this Act.

SEC. 1203. STUDY AND REPORTS CONCERNING DIRECT INVESTMENTS.

(a) STUDY REQUIRED.—The Federal Home Loan Bank Board shall conduct a study of the effect of direct investment activities on insured institutions, including comparative analyses of the effect of direct investment activities on—

(1) different sized insured institutions;

(2) State chartered insured institutions;

(3) federally chartered insured institutions; and

(4) insured institutions in each of the Supervisory Examinations Rating Classifications.

(b) REPORT REQUIRED.—Not later than 18 months after the date of enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report containing the findings and conclusions of the Board with respect to the study required under subsection (a), including—

(1) the findings and conclusions of the Board concerning the losses to the insurance fund and the degree to which such losses were the result of direct investment activities with respect to each of the classes of institutions described in subsection (a); and

(2) a comparison of the effects of direct investment activities prior to April 16, 1987, and the effect of such activities on or after April 16, 1987, for each of the classes of institutions described in subsection (a) and the losses to the insurance fund as a result of such activities.

(c) PRIOR REPORTS TO CONGRESS ON CHANGES TO DIRECT INVESTMENT REGULATIONS.—

(1) IN GENERAL.—Not less than 90 days before final approval is given by the Federal Home Loan Bank Board to any regulation which repeals or modifies (or has the effect of repealing or modifying) any regulation limiting direct investment activities, the Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the proposed regulation and the reasons for the proposed regulation, including the effect of such regulation on the insurance fund.

(2) PROSPECTIVE APPLICATION OF RULE.—Paragraph (1) shall not apply with respect to Board Resolution Numbered 87-215 and Board Resolution Numbered 87-215A.

(d) DIRECT INVESTMENT ACTIVITY DEFINED.—For purposes of this section, the term "direct investment activities" means activities which are limited under Board Resolution Numbered 87-215 and Board Resolution Numbered 87-215A.

SEC. 1204. ADJUSTABLE RATE MORTGAGE CAPS.

(a) IN GENERAL.—Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan.

(b) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) ENFORCEMENT.—Any violation of this section shall be treated as a violation of the Truth in Lending Act and shall be subject to

administrative enforcement under section 108 or civil damages under section 130 of such Act, or both.

(d) DEFINITIONS.—For the purpose of this section—

(1) the term "creditor" means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term "adjustable rate mortgage loan" means any loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) EFFECTIVE DATE.—This section shall take effect upon the expiration of 120 days after the date of enactment of this Act.

SEC. 1205. SEPARABILITY OF PROVISIONS.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

FERNARD J. ST GERMAIN,
FRANK ANNUNZIO,
CARROLL HUBBARD,
DOUG BARNARD, Jr.,
MARY ROSE OAKAR,
BRUCE F. VENTO,
CHARLES SCHUMER,
RICHARD H. LEHMAN,
BUDDY ROEMER,
MARCY KAPTUR,
BILL NELSON,
CHALMERS P. WYLIE,
JIM LEACH,
STAN PARRIS,
GEORGE C. WORTLEY,
BILL MCCOLLUM,

As additional conferees only for consideration of title I of the House bill and title III of the Senate amendment:

STEVE NEAL,
STEVE BARTLETT,
Managers on the Part of the House.

BILL PROXMIRE,
ALAN CRANSTON,
DON RIEGLE,
PAUL SARBANES,
CHRISTOPHER J. DODD,
ALAN J. DIXON,
JAKE GARN,
JOHN HEINZ,
ALFONSE D'AMATO,
PHIL GRAMM,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—COMPETITIVE EQUALITY AMENDMENTS

Conferees' Note: Many of the provisions contained in Title I of this Act were reported out by the House Committee on Banking, Finance and Urban Affairs in the 98th and 99th Congresses. Issues covered by the House Banking Committee which are similar to Title I include, among other things, the closing of the nonbank bank loophole, extension of certain sections of the Glass-Steagall Act to nonmember insured banks and thrifts, anti-tying and cross-marketing provisions, and a qualified thrift lender test. The bills considered by the House Banking Committee were H.R. 5734 and H.R. 5916 (98th Congress) and H.R. 20 (99th Congress).

SECTION 101—AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956

SECTION 101(a)—CLOSING THE NONBANK BANK LOOPHOLE

The Senate amendment closes the nonbank bank loophole in the Bank Holding Company Act by redefining the term "bank". The Act currently defines a bank as an institution that meets a two-part test: it must both accept deposits that the depositor has a legal right to withdraw on demand and be engaged in the business of making commercial loans.

The Senate amendment redefines the term "bank" to include an FDIC-insured institution whether or not it accepts demand deposits or makes commercial loans. The new definition also includes non-FDIC insured institutions that both accept demand deposits or transaction accounts and are engaged in the business of making commercial loans. Thus the bill would not cover as a bank an uninsured institution that did not, for example, offer demand deposit or transaction accounts, or one that offered such accounts but did not engage in the business of making commercial loans.

The Senate amendment maintains the express exclusions from the definition of "bank" found in current law for FSLIC-insured or federally chartered thrift institutions and certain institutions operating outside of the United States. In addition, the amendment provides further limited exceptions for credit unions, credit card banks, certain trust companies, and certain industrial banks, industrial loan companies and other similar institutions.

The House bill contains no similar provision. The House recedes to the Senate with amendments as specified below, which the Senate accepts.

TRUST COMPANY EXEMPTION

SECTION 2(C)(2)(D) OF BANK HOLDING COMPANY ACT

Under the Senate amendment, in order to qualify for exclusion from the definition of "bank," a trust company must function solely in a bona fide trust or fiduciary capacity. The Senate amendment clarifies that a trust company acting in such a bona fide trust or fiduciary capacity must comply with the following restrictions:

(1) it must receive all or substantially all of its deposits as trust funds;

(2) it may not permit its insured deposits to be offered or marketed by or through an affiliate;

(3) it may not accept demand deposits or transaction accounts or make commercial loans; and

(4) it may not obtain payment or payment-related services from the Federal Reserve or exercise most discount or borrowing privileges with the Federal Reserve.

The term "trust or fiduciary capacity" used in the trust company exclusion includes serving as trustee, executor, custodian, administrator, registrar of stocks and bonds, guardian of estates, or committee of estates of incompetents.

The House bill contains no similar exemption. The House recedes to the Senate with an amendment, which the Senate accepts. The House amendment adds an additional exemption for Investors Fiduciary Trust Company (IFTC), an institution controlled by certain diversified companies. IFTC was engaged in lawful trust, fiduciary, and agency activities as of March 5, 1987, but would have been precluded from engaging in some of those activities under the Senate provision.

The House amendment permits IFTC to continue deposit-taking activities in which it was lawfully engaged on March 5, 1987, in connection with its trust, fiduciary, and agency activities. The amendment prohibits IFTC from accepting any demand deposits other than those maintained in a trust, fiduciary, or agency capacity and further prohibits IFTC from being in the business of making commercial loans. The latter prohibition is not intended to prevent IFTC from making normal and customary advances in a trust or fiduciary capacity, such as advancing funds for the payment of distributions by unit investment trusts for which it serves as trustee.

CREDIT CARD BANK EXEMPTION

SECTION 2(C)(2)(F) OF BANK HOLDING COMPANY ACT

Under the Senate amendment, in order to qualify for the exemption from the definition of "bank", a credit card bank may engage only in credit card operations, and may not accept demand deposits or transaction accounts, accept time deposits in amounts less than $100,000, engage in the business of making commercial loans, or maintain more than one office that accepts deposits.

The word "office" is not defined in the Senate amendment. The purpose of limiting a credit card bank to one office is to prohibit it from having deposit-taking offices throughout a State or nationally. A credit card bank could maintain additional offices that engage in back-room activities typically associated with a credit card operation.

A credit card bank may make loans only through credit cards. Loans made to individuals through credit cards are not commercial loans. The prohibition against commercial loans does not limit a credit card bank from purchasing credit card receivables directly from establishments where such credit cards are accepted.

The House bill contains no similar exemption. The House recedes to the Senate with two amendments, which the Senate accepts.

The first amendment clarifies that back-room operations are not included in the one-office limitation in the Senate amendment. Credit card banks will continue to be subject to the one-office limitation for offices which accept deposits.

The second amendment adds a new section 101(h) that exempts the following from the definition of "bank": a nonbank bank whose owner made a public announcement before March 5, 1987, of its intention to convert the bank into a credit card bank within 180 days of enactment of this Act and which takes certain statutorily prescribed actions.

INDUSTRIAL LOAN COMPANY EXEMPTION

SECTION 2(C)(2)(H) OF BANK HOLDING COMPANY ACT

The Senate amendment exempts from the definition of "bank" certain industrial banks, industrial loan companies, or other similar institutions.

The House recedes to the Senate.

EXEMPTION FOR PENDING SAVINGS BANK ACQUISITION

SECTION 2(C)(2)(J) OF BANK HOLDING COMPANAY ACT

The House recedes to the Senate with an amendment, which the Senate accepts.

The amendment exempts from the definition of a "bank" a particular New York savings bank whose recent acquisition by the Great Western Financial Corporation (Great Western) has been approved by the New York State Banking Commissioner. But for the exemption, the savings bank subsidiary would be a "bank" under section 2(c) of the Bank Holding Company Act, thus making Great Western a bank holding company.

The House amendment exempts the savings bank subsidiary from the definition of a "bank" under the Act, thereby allowing Great Western to retain the savings bank subsidiary without becoming a bank holding company. However, the House amendment specifically prohibits the savings bank subsidiary from engaging in the future, directly or through insurance products it receives from or provides to Great Western, in the sale or underwriting of insurance. Subject to this limitation, the Conferees do not intend to limit any insurance activities otherwise permitted to Great Western itself, or any of its other affiliates.

Further, the savings bank subsidiary would lose its exemption if any deposits subject to insurance premium assessment under the National Housing Act of any Great Western subsidiary or affiliate are directly or indirectly transferred to or acquired by the savings bank subsidiary if the effect were to materially reduce the amount of those premium assessments.

The House amendment subjects the savings bank subsidiary to the anti-tying restrictions of the Bank Holding Company Act Amendments of 1970, and the insider and preferential lending restrictions of the Federal Reserve Act.

OTHER DEFINITIONS

The Senate amendment defines the following terms:

AFFILIATE

__SECTION 2(K) OF BANK HOLDING COMPANAY ACT

The term "affiliate" is defined as any company that controls, is controlled by, or is under common control with another company.

DEMAND DEPOSITS

The term "demand deposits" is intended to encompass all types of deposits that can be withdrawn on demand, regardless of the means of withdrawal. Any deposit account from which funds are transferred automatically pursuant to the depositor's instructions (e.g., a sweep account) is also a "demand deposit".

"Deposits that the depositor may withdraw by check or similar means for payment to third parties" includes accounts from which funds may be transferred to third parties by negotiable order of withdrawal (NOW), share draft, wire, computer order, or other electronic means, regardless of whether the depository institution has the right to require notice before permitting such withdrawals.

COMMERCIAL LOAN

A "commercial loan" includes any extension of credit by a bank to a person for business purposes. Thus, for example, broker call loans, the purchase of retail installment paper, and loans to dealers in government or other securities are commercial loans because they are loans made for a business purpose in which the creditworthiness of the borrower is an important factor in determining whether to grant the extension of credit. Likewise, an overdraft in an account of a business customer or for business purposes at the bank, including an intra-day overdraft, is a commercial loan. Overdrafts in business accounts are commercial loans because they provide financing for the customer's business operations. Even intra-day overdrafts permit business customers to avoid more formal extensions of credit to meet their payment obligations.

No person shall be deemed to have made a "commercial loan" solely because of effecting purchases of commercial paper (or other obligations, instruments, or securities) as agent for the accounts of fiduciary customers.

SECTION 2(I) THRIFT INSTITUTION

The term "thrift institution" is currently defined as a building and loan or savings and loan association, a cooperative bank, a Federal savings bank, or a mutual savings bank. The Senate amendment would amend the definition to include any State-chartered savings bank whose holding company is registered as a savings and loan holding company under the Savings and Loan Holding Company Act.

SECTION 2(L) & (M)—SAVINGS BANK HOLDING COMPANY AND QUALIFIED SAVINGS BANK

The definitions of "savings bank holding company" and "qualified savings bank" are discussed below in section 101(d), where they are used.

SECTION 101(B) IMMEDIATE DIVESTITURE REQUIREMENT

Under the Senate amendment, a company which acquired a nonbank bank after March 5, 1987, must immediately comply with the Bank Holding Company Act or divest its bank subsidiary. Such a company would not be permitted to utilize the 2-year period currently provided in the law for newly formed bank holding companies to conform to the requirements of the Bank Holding Company Act.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 101(C) GRANDFATHER PROVISIONS

Under the Senate amendment, companies that acquired nonbank banks on or before March 5, 1987, are permitted to retain the bank and not be regarded as a bank holding company so long as the company does not directly or indirectly either (1) acquire control of an additional bank or thrift institution; or (2) acquire more than 5 percent of the shares or assets of another bank or a thrift institution, except for loans or other accounts receivable acquired in the ordinary course of business and for shares acquired in a bona fide fiduciary capacity or held temporarily pursuant to an underwriting commitment in the ordinary course of business or in an account established solely for trading purposes. The prohibition on acquiring the shares or assets of a bank or thrift prevents a grandfathered nonbank bank from expanding through acquisition of, or merger with, banks or thrifts.

A company would not lose its grandfather rights by acquiring a thrift institution or more than 5 percent of its shares as a result of a transaction arranged by the Federal Savings and Loan Insurance Corporation under the emergency thrift acquisition provisions of section 408(m) of the National Housing Act if the institution has assets of at least $500 million or is located in a State in which the acquiring company controlled a bank on March 5, 1987.

Furthermore, regarding the 5 percent limit, a company does not hold shares in the normal course of an underwriting business if it attempts to exercise any control over the management or policies of the bank or thrift through its ownership of those shares.

The fiduciary exemption in section 4(f)(2)(A)(ii) is intended to cover situations in which a trust or agency account managed by a bank trust department affiliated with a company, or an SEC-registered diversified investment company within the meaning of Section 5(b)(1) of the Investment Company Act of 1940 managed by an investment adviser affiliated with a company, makes passive investments in the ordinary course of business and thereby does not acquire "control" as determined under the Bank Holding Company Act or the Change in Bank Control Act. Interlocking officer, director, or employee relationships between the bank trust department or investment adviser and its affiliates, and the bank or insured institution in which the passive investment is made, would not be permitted.

The exemption for shares acquired in a bona fide fiduciary capacity includes shares in separate accounts of insurance companies that must be managed for the sole benefit of pension plan participants under the Employee Retirement Income Security Act of 1974 or for the sole benefit of annuitants or policyowners with variable annuity or variable life contracts.

RESTRICTIONS ON GRANDFATHERED NONBANK BANKS

SECTION 4(F)(3)(B)(II) OF THE BANK HOLDING COMPANY ACT

In view of the potential for the ownership of nonbank banks by commercial firms to result in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and in order to avoid the potential for unfair competition with regulated bank holding companies, the section provides that the company will lose its grandfather rights and thereby become subject to the Bank Holding Company Act if the nonbank bank:

(1) engages in any activity in which it was not lawfully engaged as of March 5, 1987 (thus preventing the nonbank bank from, for example, both offering demand deposits and engaging in the business of making commercial loans);

(2) offers or markets products or services of an affiliate that are not permissible for

bank holding companies, or permits its products or services to be marketed by or through an affiliate engaged in impermissible nonbanking activities, unless the products and services in question were being offered or marketed by the bank or affiliate as of March 5, 1987, and then only in the same manner as they were offered or marketed as of that date;

(3) permits any overdraft, including an intra-day overdraft, on behalf of an affiliate, or incurs any such overdraft in its account at a Federal Reserve bank, unless such an overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

(4) increases its assets at an annual rate of more than 7 percent beginning 1 year after the date of enactment of the Competitive Equality Banking Act of 1987.

Grandfathered institutions may sell assets to remain within the statutory limit. If, for example, a bank's credit card accounts receivable grow at a 10 percent rate, the bank can remain in compliance with the 7 percent limitation by selling other assets and distributing the proceeds as a dividend.

The Conferees intend that the Federal Reserve Board, in determining compliance with the 7 percent growth rate, utilize a procedure which computes the grandfathered institution's growth rate on an average basis.

A company that fails to comply with the grandfather restrictions is given 180 days to comply with the Bank Holding Company Act by divesting the bank or by registering as a bank holding company and conforming its activities to those permitted under the Bank Holding Company Act for bank holding companies. The Conferees expect the Federal Reserve Board, in administering those restrictions, to issue cease-and-desist orders or take other administrative action to bring about compliance before issuing a final order to divest or register as a bank holding company.

In order not to disrupt established business affiliations in existence before March 5, 1987, and in conformity with the other grandfather provisions of the Bank Holding Company Act, grandfather rights under this section are granted only for affiliations in existence on March 5, 1987. Therefore, these grandfather privileges may not be transferred to another organization, and will terminate if another company acquires, directly or indirectly, the bank involved.

The House bill contains no similar provisions. The House recedes to the Senate provision, with amendments as described below, which the Senate accepts.

JOINT MARKETING RESTRICTIONS

SECTION 4(F)(3)(B)(II) OF THE BANK HOLDING COMPANY ACT

The Senate amendment imposes certain restrictions on joint marketing between a grandfathered company and its nonbank affiliate. The joint marketing of products and services between an insured depository institution and a company engaged in general commerce presents a significant risk to the public in the form of potential conflicts of interest, unsound banking practices, unfair competition, and lack of impartiality in the credit granting process. The Bank Holding Company Act addresses those concerns by requiring the separation of banking and commerce. If, however, affiliations between banks and commercial enterprises are allowed to continue, as under the grandfather provision, those concerns must be addressed through restrictions designed to ensure objectivity in the credit granting process and the avoidance of other adverse effects.

The joint marketing restrictions are designed to achieve this objectivity and to lessen the risks of conflicts of interest and other adverse effects the Act was designed to prevent by limiting transactions between the bank and its affiliates that raise a significant potential for those abuses. The joint marketing restrictions also minimize the unfair competitive advantage that grandfathered commercial companies owning nonbank banks might otherwise enjoy over regulated bank holding companies and over competing commercial companies that have no subsidiary bank.

The joint marketing restrictions apply to two categories of products and services: (1) products and services of an affiliate that are not permissible under section 4(c)(8) of the Bank Holding Company Act for a bank holding company; and (2) products and services of the grandfathered nonbank. In category (1), the restrictions on an affiliate's products and services are such that, for example, a company could not market life insurance or automotive supplies through its bank subsidiary, since those products are not permissible for bank holding companies generally under section 4(c)(8) of the Act. Likewise, in category (2), the grandfathered nonbank may not permit its products or services to be offered or marketed through an affiliate that engages in nonbanking activities that are prohibited for bank holding companies generally under section 4 of the Bank Holding Company act. Thus the life insurance affiliate or the automobile parts retailer could not market the bank's insured deposits or trust accounts. On the other hand, the grandfathered nonbank bank could offer its customers loans from an affiliated mortgage banking or consumer finance company, and such an affiliate could offer its customers the products or services of the bank, because these activities are permitted under section 4(c)(8) of the Bank Holding Company Act.

The joint marketing restrictions do not apply in the case of products or services that were being jointly marketed by the affiliates as of March 5, 1987. The exemption from the joint marketing restrictions applies only to a specific company that was engaged in the activity as of March 5, 1987. An affiliate that was not engaged in a given joint marketing activity as of March 5, 1987, may not commence that activity even if it was being conducted by another affiliate as of March 5, 1987.

The bill grandfathers joint marketing activities of the type and in the manner engaged in by a nonbank bank and its affiliates on March 5, 1987. However, these grandfather provisions do not lock into place the specific terms or conditions of the particular grandfathered product or service.

The House bill contains no comparable provision. The House recedes to the Senate.

OVERDRAFTS

The restrictions on overdrafts are designed to reduce the risk to the Federal Reserve System, the depositors and creditors of nonbank banks, and the Federal Deposit Insurance Corporation presented by nonbank banks' access to Federal Reserve payment services. Where nonbank banks provide payment services, including funds transfer, book-entry securities transfer, automated clearing house, and check-collection services to their affiliates, the nonbank bank will, as a practical matter, be unable to independently evaluate the creditworthiness of the affiliate using the service.

Without the independent credit evaluation that banking institutions routinely perform on their unaffiliated customers, there is a clear danger that affiliates of nonbank banks could incur excessive overdrafts on the books of the nonbank bank, which in turn may cause the nonbank bank to overdraw its account at the Federal Reserve bank.

For example, a troubled affiliate of a nonbank bank could direct the nonbank bank to make final, irrevocable funds transfers to pay its creditors far in excess of the balance in the affiliate's account at the nonbank bank or even the nonbank bank's account at the Federal Reserve. Those transfers could precipitate the failure of the nonbank bank, causing loss to the depositors, creditors, and the FDIC.

These overdraft restrictions reduce those risks by providing that grandfathered nonbank banks lose their grandfathered status if they permit affiliates to incur overdrafts at the nonbank bank. Overdrafts in an affiliate's accounts at a nonbank bank are difficult to police, particularly in times of financial difficulty of the affiliate, when the potential for overdrafts resulting in losses is highest. Accordingly, the overdraft restrictions provide that nonbank banks lose their grandfathered status if they incur overdrafts at Federal Reserve banks. Federal Reserve banks are in a position to monitor such overdrafts on a real time basis. The overdraft restrictions exclude inadvertent overdrafts that are beyond the control of the nonbank bank and its affiliate.

The House bill contains no similar provision. The House recedes to the Senate with an amendment exempting Federal Reserve-designated primary dealers from the overdraft restrictions. The Senate accepts the House amendment with an amendment requiring that the overdrafts incurred by primary dealers be, as required by the Federal Reserve, fully secured by securities eligible for settlement under the Federal Reserve Look-entry system, including securities of the U.S. Government, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Farm Credit Administration, Federal Home Loan Banks, and the newly created FSLIC Financing Corporation. The Conferees agreed.

The Federal Reserve has authority to determine the extent (if at all) to which overdrafts are permitted on the Federal Reserve, including Fedwire overdrafts. The amendment in no way impairs this. The amendment neither requires nor suggests that a bank's running overdrafts for an affiliated primary dealer is necessarily appropriate on a continuing basis. The bank's decision to permit such overdrafts would remain subject to supervision by appropriate federal and state banking regulators.

NOTICE OF GRANDFATHERED AFFILIATIONS AND ENFORCEMENT

SECTION 4(F) (5), (6), (7) & (8) OF THE BANK HOLDING COMPANY ACT

A company qualifying for grandfather treatment must provide the Federal Reserve Board, within 60 days of the date of enactment of the bill, with its name and address, the name and address of each bank it controls, and a description of the bank's activities. The board is given authority to examine and require reports from the company or the bank, but only in order to monitor and enforce compliance with the grandfather provisions. The Board may not examine those institutions for safety or sound-

ness or for compliance with any laws other than the grandfather provisions of the Act.

In addition to its enforcement authority under section 5 of the Bank Holding Company Act, the Board has authority to use civil enforcement powers, such as cease-and-desist orders, to assure compliance with the grandfather provisions. This authority may not be used against companies or banks grandfathered under this Act for any other purpose, and does not limit the authority of the Comptroller of the Currency or the FDIC over national banks and nonmember insured banks, respectively.

The House bill contains no similar provisions. The House recedes to the Senate.

ANTI-TYING RESTRICTIONS

SECTION 4(F)(9) OF THE BANK HOLDING COMPANY ACT

Although a company controlling a bank under the grandfather privilege is not treated in the Senate amendment as a bank holding company under the Bank Holding Company Act, it is made subject to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the insider and preferential lending restrictions of section 22(h) of the Federal Reserve Act as if it were a bank holding company. Therefore, the subsidiary bank of such a grandfathered company may not condition the grant of credit or the provision of any other service or product on the purchase of a product or service from the parent company or one of its affiliates.

Further, the grandfathered company and its nonbanking affiliates are also made subject to those anti-tying provisions, but only with respect to transactions involving the bank affiliate. Therefore, the company could not condition the grant of its products or services on a requirement that the customer purchase a product or service from its affiliate bank.

The anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 are in no way intended to apply to the four traditional banking services—loans, including loans made on credit cards, discounts, deposits, and trust services. Thus, the anti-tying restrictions would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank bank to another traditional banking service offered by an affiliate.

A company eligible for the grandfather privilege may give up the privilege at any time by registering as a bank holding company and complying with all of the provisions of the Bank Holding Company Act.

ANTI-TYING PROVISIONS APPLICABLE TO CERTAIN INSTITUTIONS

SECTION 4(H) OF THE BANK HOLDING COMPANY ACT

Under the Senate amendment, although trust companies, Edge Act companies, credit card banks, and industrial loan companies are not treated as banks under the Bank Holding Company Act, they are made subject to the anti-tying provisions of the Bank Holding Company Act Amendments of 1970 and to the insider and preferential lending prohibitions of section 22(h) of the Federal Reserve Act. Thus those institutions—like other banks—may not require their customers to purchase or use the products or services of an affiliated company as a condition for obtaining a service or receiving a product at a favorable price from the institutions. Companies that control those exempted institutions are also made subject to the anti-tying restrictions, but only in connection with transactions involving the products and services of the exempt institution. Thus the parent companies of such exempted institutions and other affiliates cannot provide their products or services on condition that the customer obtain a product or service from the exempted institution.

The anti-tying provisions of the Bank Holding Company Act Amendments of 1970 are not made applicable to marketing practices of the parent holding company, or its affiliates, that do not involve the products or services of the exempted institution.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts. The House amendment applies the anti-tying restrictions of the Bank Holding Company Act Amendments of 1970 and the insider and preferential lending prohibitions of the Federal Reserve Act to certain named exempted institutions.

NONBANK BANKS OWNED BY BANK HOLDING COMPANIES

SECTION 4(G) OF THE BANK HOLDING COMPANY ACT

The Senate amendment imposes restrictions on a bank holding company that controls a nonbank bank. The bank holding company may retain the bank provided that the institution does not both accept demand deposits and engage in the business of making commercial loans, and does not increase the number of locations from which it conducts its business after the date it becomes a bank. Those restrictions would no longer apply once the bank holding company could obtain approval under the Douglas Amendment to acquire the bank in question. Under the Douglas Amendment, this would occur when the State in which the bank is located authorizes its acquisition by the out-of-State bank holding company.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 101(D)—STATE AUTHORIZED ACTIVITIES OF SAVINGS BANKS

SECTION 3(F) OF THE BANK HOLDING COMPANY ACT

The Senate amendment establishes a special rule for State-chartered, FDIC-insured savings banks which are controlled by, or become controlled by, savings bank holding companies.

The term "savings bank" is defined to include cooperative banks that are FDIC insured.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts, providing a special rule for State-chartered, FDIC-insured savings banks that are controlled by savings bank holding companies.

Under the House amendment, such a savings bank may engage in any nonbanking activity, except insurance activities (described below), either directly or through a subsidiary, that it is permitted to conduct directly as a State-chartered savings bank, even if those activities are not otherwise permissible for bank holding companies.

In order to engage in those activities, however, such a savings bank must remain a savings bank and a subsidiary of a savings bank holding company. If such a savings bank is acquired or controlled by a company that is not a savings bank or a savings bank holding company, then the activities conducted pursuant to section 101(d) must be terminated within two years, except that the savings bank may engage in any nonbanking activities otherwise permissible under the Bank Holding Company Act.

INSURANCE ACTIVITIES

SECTION 4(F)(2) & (3) OF THE BANK HOLDING COMPANY ACT

The insurance activities of savings bank holding companies are treated separately. The Senate amendment would have limited insurance activities to those permissible under section 4(c)(8) of the Bank Holding Company Act and the sale of savings bank life insurance (SBLI) for savings banks that were engaged in selling SBLI as of March 5, 1987, so long as the following four conditions were met: (1) the activity was expressly authorized by the States of Connecticut, Massachusetts, or New York and the bank was located in the State that authorizes the activity; (2) the activity was carried out by the savings bank and not by any subsidiary or affiliate of the savings bank or its holding company; (3) the activity was carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987; and (4) the activity was carried out in the same manner as the SBLI activity of savings banks in the same State that are not part of a holding company. As with the other activities permitted by this section, SBLI activities must be terminated within two years if a qualified savings bank is acquired by a company other than a savings bank or a savings bank holding company.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts.

The amendment made the following major changes in this provision: First, savings banks that are eligible to participate in SBLI activities include all savings banks that were permitted to engage in such activities as of March 5, 1987, subject to the same four conditions. Thus savings banks in the listed States that were not actually engaging in SBLI activities on March 5, 1987, could thereafter commence such activities so long as they were permitted to do so on March 5, 1987. However, savings banks in other States could not do so because their laws did not specifically authorize SBLI activities as of that date.

Second, permissible SBLI activities were clarified to include the underwriting as well as the sale of SBLI. This provision was added to reflect the fact that State law in the three SBLI States permits both such activities.

Third, the phrase "retains its character as a savings bank" was added to reflect the intent that savings banks that are permitted to engage in SBLI activities continue to operate as State-chartered, FDIC-insured savings banks and not become in effect commercial banking institutions.

The Senate amendment defines the term savings bank holding company to mean any company that controlled one or more qualified savings banks if the assets of the subsidiaries constituted as of March 5, 1987, and thereafter, at least 70 percent of the total assets of the holding company.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts.

The House amendment makes three major changes in the Senate amendment. First, the 70 percent test is to be applied as of the time of the formation of the savings bank holding company, not as of March 5, 1987.

Second, the amendment defines the 70 percent test more broadly solely for the purpose of determining whether a qualified sav-

ings bank may continue to sell and underwrite SBLI after its acquisition by a bank holding company. For this purpose alone, the assets of any other bank affiliated or under contract to affiliate with such qualified savings bank as of March 5, 1987, shall be considered to be the assets of the savings bank. This provision is intended to apply to two specific instances in the State of New York and one in Massachusetts, in which bank holding companies have acquired savings banks authorized to engage in the business of SBLI.

The Conferees note that there are three other instances in which savings banks have been acquired by, or are under contract to affiliate with, bank holding companies that already control one or more commercial banks. As these savings banks are not located in any of the three Northeastern States that provide for the sale of SBLI, they could not avail themselves of the special 70 percent test for SBLI activities. However, the Conferees wish to make clear that any qualified savings bank that is acquired by such a bank holding company can continue to exercise nonbanking powers granted by section 4(c)(8) of the Bank Holding Company Act. Thus, for example, certain savings banks in the State of Washington that have been, or are in the process of being, acquired by bank holding companies can continue to engage in any real estate activities permitted by the Federal Reserve Board under section 4(c)(8). For example, in *Rainier Bancorporation (United Bank)*, 73 Fed. Res. Bull. 216 (1987), the Federal Reserve Board approved the acquisition of a Washington savings bank that had engaged in certain real estate investment and development activities authorized by State law. Based on commitments made by the bank holding company, the Board permitted those activities to continue.

Third, the House amendment adds to the definition of "qualified savings bank" the phrase "any interim savings bank that is established to facilitate a corporate reorganization for the formation of a holding company involving a savings bank which was chartered on or before March 5, 1987." This provision creates temporary authority in order to permit corporate reorganizations; it does not grant any permanent authority.

SECTION 101(E)—EXEMPTION FOR THRIFT INSTITUTIONS' BANK

SECTION 2(A)(5)(E) OF THE BANK HOLDING COMPANY ACT

Current law exempts from the Bank Holding Company Act companies that control a State bank or trust company which is wholly owned by thrift institutions and which restricts itself to performing certain limited services for thrift institutions. This section allows savings banks to participate in the ownership of such banks or trust companies and allows the bank or trust company to provide its limited services to savings banks as well as to thrift institutions.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 101(F) ON STATE AUTHORITY TO REGULATE

The House recedes to the Senate with an amendment, which the Senate accepts, clarifying that States retain their regulatory authority over companies doing business within their borders.

By adding "companies" to the reservation of State authority found in section 7 of the Bank Holding Company Act, the amendment clarifies that grandfathered institutions which are not banks for purposes of the Act and their parent companies must comply with otherwise applicable State law. In closing a loophole in Federal law, the Conferees do not intend to preempt State authority.

Section 7 does not confer on States any new authority over the activities of bank holding companies. To the extent that States have authority over these activities under current law, such authority is retained.

TITLE I—PART 2

SECTION 102—AMENDMENTS TO THE FEDERAL RESERVE ACT

SECTION 102(A)—RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

The Senate amendment amends the Federal Reserve Act to add a new section 23B, restricting the range of permissible transactions between a member bank and an affiliated company. Although section 23B applies to transactions between a member bank and all of its affiliates, the Federal Reserve Board is authorized to exempt certain affiliates from the provisions of section 23B. As with section 23A, new section 23B applies to federally insured nonmember banks through section 18(j) of the Federal Deposit Insurance Act. Furthermore, as provided in section 104(d)(1) of the Senate amendment, the provisions of sections 23A and 23B apply to transactions between a federally insured thrift and its savings and loan holding company affiliates engaged in the newly authorized nonbanking activities that are permissible to bank holding companies under section 4(c)(8) of the Bank Holding Company Act.

The section 23B provides that a member bank and its subsidiaries may engage in certain transactions (including loans and purchases of assets) with any affiliate only if the terms and conditions of the transaction, including credit standards, are substantially the same as, or at least as favorable to the bank as, those prevailing at the time for comparable transactions with nonaffiliated companies. Thus, for example, underwriting standards may not be relaxed in comparison to underwriting standards for transactions with nonaffiliated companies. If there are no comparable transactions, the terms and conditions of the transaction must be the same as those that, in good faith, would be offered to or would apply to nonaffiliated companies.

Section 23B(b) requires that a majority of the outside directors of the bank approve the purchase of securities by the bank from an underwriting affiliate in certain circumstances. This requirement could be satisfied either by prior approval of the specific acquisition or by the establishment in advance of specific standards by the outside directors for such acquisitions. If the outside directors establish such standards, they must regularly review acquisitions to assure that the standards have been followed, and they must periodically review the standards to assure that they continue to be appropriate in light of market and other conditions.

A member bank or subsidiary of a member bank is not a "fiduciary" for purposes of section 23B(b)(1)(B) if it acts solely as a broker.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 102(B)—APPLICABILITY OF SECTION 23B TO INSURED NONMEMBER BANKS

The Senate amendment amends the Federal Deposit Insurance Act to make the restrictions of section 23B of the Federal Reserve Act applicable to FDIC-insured nonmember banks.

The House bill contained no similar provision. The House recedes to the Senate.

SECTION 102(C)—EDGE ACT AND AGREEMENT CORPORATIONS

The Senate amendment provides that any company, other than a bank, which directly or indirectly acquires an Edge Act or Agreement corporation after March 5, 1987, is to be considered a bank holding company for all purposes of the Bank Holding Company Act except section 3, which relates to the acquisition of additional banks. Thus, if a company acquires an Edge Act or Agreement corporation, either directly or through a subsidiary (including a bank), the company will be required to conform its activities to those permissible for bank holding companies under section 4 of the Bank Holding Company Act.

The Senate amendment does not in any way affect companies that currently own Edge Act or Agreement corporations or the ability of banks or bank holding companies to acquire additional Edge Act or Agreement corporations.

If an entity is subject to the Bank Holding Company Act only because it controls an Edge Act or Agreement corporation, it will cease to be subject to the Bank Holding Company Act if it divests that Edge Act or Agreement corporation. It will, of course, be subject to other applicable laws.

The House bill contains no similar provision.

The House recedes to the Senate with an amendment, which the Senate accepts, providing that the requirement that any company purchasing an Edge Act corporation must conform its activities to those permissible under section 4 of the Bank Holding Company Act shall not apply to an application by Midland Bank, plc, pending before the Board on July 1, 1987. The Board, however, may subject the financial activities in the United States of the acquiring company to section 4 of the Bank Holding Company Act.

SECTION 103—SECURITIES AFFILIATIONS OF NONMEMBER INSURED BANKS

Section 20 of the Banking Act of 1933 prohibits a member bank from being affiliated with a company principally engaged in underwriting securities, and section 32 of the Banking Act prohibits an officer, director, or employee of a member bank from serving as an officer, director, or employee of a company primarily engaged in underwriting securities. Those restrictions do not apply to nonmember banks.

The Senate amendment applies these restrictions, and any regulations promulgated by the Board thereunder, to FDIC-insured nonmember banks until March 1, 1988. Affiliations or relationships which commenced before March 5, 1987, are not affected and may continue.

Further, those restrictions are not applicable to a foreign bank solely because it has an insured branch in the United States. However, section 32 would apply to such an insured branch as if it were an insured bank. The restrictions similarly do not apply to trust companies or credit card banks.

The moratorium on new affiliations of insured State nonmember banks with firms principally engaged in certain securities activities is not intended to prohibit securities firms, insurance companies, or other companies already affilated with such banks from continuing to sponsor, organize, establish, distribute, or underwrite new mutual funds,

limited partnerships, separate accounts, or other commingled investment vehicles in the ordinary course of their securities, insurance, or other business. Although these entities would be affiliated with a State nonmember bank, their formation would not constitute the type of new affilation that this provision is intended to prohibit during the moratorium, but rather is consistent with the maintenance of the status quo. Similarly, changes in directors, officers, and other personnel of insured State nonmember banks and their securities firm affilates may continue to be effected as long as they do not cause a new affiliation between such a bank and a securities firm.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(a)—DEFINITIONS; SAVINGS AND LOAN HOLDING COMPANY ACT

The Senate amendment amends the definition section of the Savings and Loan Holding Company Act (SLHCA) by adding definitions for the terms "bank holding company" and "bank". Those terms are defined in the SLHCA to have the same meaning as in the Bank Holding Company Act.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(b)—SAVINGS AND LOAN HOLDING COMPANY ACTIVITY AND GRANDFATHER PROVISIONS

The Senate amendment provides that the current exemption from the nonbanking activity restrictions in the SLHCA for unitary savings and loan holding companies (companies that control only a single insured thrift institution) will be available only if the subsidiary thrift institution meets the "qualified thrift lender" ("QTL") test. The QTL test requires the thrift to devote at least 60 percent of its assets to housing and related activities. If the subsidiary thrift meets the QTL test, its parent unitary savings and loan holding company would remain, as it is now, with no limits on its direct or indirect nonbanking activities. Grandfather rights for unitary savings and loan holding companies formed before March 5, 1987, would allow such companies to continue to engage in nonbanking activities engaged in on the grandfather date even if their subsidiary thrifts fail to meet the QTL test.

The Senate amendment amends the Savings and Loan Holding Company Act to provide that no savings and loan holding company may commence, or continue for more than 2 years after the date it becomes a holding company or the date of enactment of the Competitive Equality Banking Act (whichever is later), any activity other than those now permissible for a multiple savings and loan holding company as well as additional activities determined by the Federal Reserve Board to be permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act (but subject to any FSLIC limitations and restrictions).

This restriction does not apply to a unitary savings and loan holding company whose subsidiary thrift meets the QTL test. Thus such a unitary savings and loan holding company may engage in any nonbanking activity without regard to the nonbanking restrictions of the Savings and Loan Holding Company Act. Moreover, those nonbanking restrictions will not apply to a unitary savings and loan holding company that becomes a multiple savings and loan company by acquiring additional thrift institutions pursuant to section 406(f) or 408(m) of the National Housing Act, so long as all such additional institutions satisfy the QTL test.

Even if a unitary savings and loan holding company formed before March 5, 1987, does not meet the QTL test, it is exempt from the nonbanking restrictions of the Savings and Loan Holding Company Act so long as:

(1) the company does not acquire a bank or an additional insured thrift by means other than a FSLIC-assisted acquisition under section 406(f) or 408(m) of the National Housing Act;

(2) its existing subsidiary thrift continues to meet the asset test found in section 7701(a)(19) of the Internal Revenue Code after the grandfather date;

(3) the unitary savings and loan holding company does not engage in an activity in which it did not engage on the grandfather date and which is not permissible for savings and loan holding companies whose thrifts do not meet the QTL test;

(4) the subsidiary does not increase the number of locations from which it does business, except through a transaction under section 406(f) or 408(m) of the National Housing Act; and

(5) the insured institution does not permit any overdraft, including an intra-day overdraft, on behalf of an affiliate, or incur any such overdraft in its account at a Federal Reserve bank, unless such an overdraft results from an inadvertent computer or accounting error that is beyond the control of both the insured institution and the affiliate.

The FSLIC may eliminate or modify grandfather rights under this provision and require a grandfathered unitary savings and loan holding company to terminate any of its nonbanking activities, after giving the parties an opportunity for a hearing, if it determines that such action is necessary to prevent conflicts of interest, or unsafe or unsound practices, or is in the public interest.

The Senate amendment also provides that no savings and loan holding company may engage in a nonthrift or securities underwriting activity without the prior approval of the FSLIC. The FSLIC must consider, in approving such an application, the same factors as the Federal Reserve Board considers when approving an application under section 4(c)(8) of the Bank Holding Company Act. The prior approval requirement does not apply to a unitary savings and loan holding company whose subsidiary thrift meets the QTL test.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(c)—QUALIFIED THRIFT LENDER TEST

The Senate amendment permits a unitary savings and loan holding company to continue to engage in any activity, without the prior approval of the FSLIC, if its sole insured institution subsidiary meets the QTL test. This test requires that the thrift have at least 60 percent of its tangible assets, including investments made by a subsidiary of such institution, invested in loans, equity positions, or securities related to domestic residential real estate or manufactured housing and property used by the institution in the conduct of its business or to facilitate acquisitions and mergers under sections 406(f) and 408(m) of the National Housing Act.

This test must be met on an average basis in 3 out of every 4 quarters and 2 out of every 3 years. In addition, in meeting the 60 percent requirement, cash and other liquid assets specified in section 5A of the Federal Home Loan Bank Act, and one-half of the dollar value of mortgages originated and sold within 90 days, may be included, up to 10 percent of the thrift's assets.

It is the intent of the conferees that the Federal Home Loan Bank Board use its existing authority under section 408(h)(i) of the Savings and Loan Holding Company Act to adopt regulations implementing the requirements of the QTL test that would be effective on or before January 1, 1988.

It is expected that these regulations will, to the extent practicable, and without imposing undue administrative burden on insured institutions, define terms and implement the requirements of the QTL test, including the averaging requirement, so as to accomplish the basic objectives of committing insured institutions to the unique, congressionally defined role of providing housing-related finance. It is also expected that the Board will be especially cognizant of the dangers of evasion that may be represented by various options for the calculation of the QTL test, and will adopt regulations that minimize, to the extent feasible and without imposing undue burden on insured institutions, the risk of evasions of the QTL test. Specifically, these regulations should provide that compliance with the qualified thrift lender requirements be determined on the basis of data that accurately and currently reflect investments made by insured institutions, and should prevent or disregard short-term investment portfolio changes designed to evade or circumvent the intent of the QTL test.

As noted above, thrift institutions generally are given until January 1, 1988, to satisfy the QTL test. In contrast to the manner in which the QTL test is imposed on thrift institutions generally, a 10-year phase-in of the QTL standard is provided for thrift institutions chartered as State savings banks before October 15, 1982. During this 10-year period, such an institution must not decrease its percentage of qualifying assets below the percentage it held on the date of enactment, and must increase its percentage of assets devoted to housing pursuant to a prescribed formula.

The FSLIC may grant temporary exceptions from the QTL test when extraordinary circumstances exist, such as when high interest rates reduce mortgage demand to such a degree that an insured institution lacks sufficient opportunity to meet the asset requirements or to facilitate acquisitions and mergers under sections 406(f) and 408(m) of the National Housing Act.

Once an institution fails to maintain its status as a qualified thrift lender, it cannot qualify again for that status for a period of 5 years. For good cause, the FSLIC may grant the holding company of such an insured institution up to 3 years to comply with the activity restrictions that would automatically be imposed on the company.

Any savings and loan holding company organized under foreign law as of June 1, 1984, which controls a single insured institution on the date of enactment of the Competitive Equality Banking Act, is not subject to the activity restrictions with respect to activities conducted exclusively in a foreign country.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts that makes the insured institution acquired under section 106(c) of the Competitive Equality Banking Act eligible for the 10-year phase-in period to meet the requirements of the OTL test.

SECTION 104(d)—AFFILIATE TRANSACTION AND MARKETING RESTRICTIONS

The Senate amendment provides that prohibitions on inter-affiliate transactions currently applicable to savings and loan holding companies shall not apply to transactions between a subsidiary thrift institution and affiliates engaged in activities permissible for a bank holding company under the Bank Holding Company Act. Those transactions will, instead, be subject to the restrictions of sections 23A and 23B of the Federal Reserve Act. This has the effect of providing parity between a bank and a thrift holding company with respect to dealings between the depository institution and affiliates engaged in activities permitted under section 4(c)(8).

However, in adopting these provisions the conferees do not intend to override any Bank Board or FSLIC safety and soundness regulation. The Bank Board should review its safety and soundness regulations in this area and preserve any or all of them necessary to ensure safety and soundness of thrift institutions. Such regulations, however, should not conflict with statutory provisions, such as section 408(d)(6) of the National Housing Act, which require the prior approval of the FSLIC on a case-by-case basis of certain transactions between an insured institution and its affiliates.

This section also amends the Savings and Loan Holding Company Act to prohibit diversified savings and loan holding companies and their subsidiary thrift institutions from engaging in joint marketing activities of the type prohibited for grandfathered companies and their nonbank bank subsidiaries under section 101(c) of this bill. Thus, under this provision, a thrift institution owned by a diversified savings and loan holding company may not offer or market products or services of an affiliate that are not permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act, or permit its products or services to be offered or marketed by or through such an affiliate, unless the bank or affiliate in question was offering or marketing the particular product or service as of March 5, 1987. Thus, for example, a diversified holding company that owns an insured institution and an automobile company, could not market the loans of its insured institution through its parent company, and its thrift subsidiary could not take orders for cars produced or sold by the parent company unless such activities were being conducted as of March 5, 1987. If so, the activity may be continued but only in the same manner as conducted as of March 5, 1987.

A diversified savings and loan holding company is currently defined as a savings and loan holding company whose subsidiary insured institution and related activities as permitted for a multiple savings and loan holding company represented, on either an actual or pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the FSLIC.

The Senate amendment provides an exception for a diversified savings and loan holding that is a reciprocal interinsurance exchange and that acquired its subsidiary insured institution before January 1, 1984. The company covered by this exception, United States Automobile Association, provides its services almost entirely to active or former officers of the United States military services and their current and former dependents.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(e)—ANTI-TYING RESTRICTIONS

The Senate amendment provides that the anti-tying provisions currently applicable to Federal thrift institutions and their affiliates shall also apply to any insured thrift institution which is a subsidiary of a savings and loan holding company and to the parent savings and loan holding company, and its nonbanking affiliates, with respect to products and services offered by the thrift subsidiary. The Senate amendment does not restrict the conditioning of products and services by a savings and loan holding company and its nonbanking affiliates when a thrift product or service is not involved.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(f)—TREATMENT OF FDIC-INSURED SAVINGS BANKS AND COOPERATIVE BANKS AS FSLIC-INSURED INSTITUTIONS

The Senate amendment establishes a procedure under which companies that own only State-chartered savings banks and cooperative banks, which are normally treated as "banks" under the Bank Holding Company Act, may be regulated as savings and loan holding companies rather than as bank holding companies under the Bank Holding Company Act. Under this provision, a savings bank that is either uninsured or insured by the FDIC, and that meets the QTL test, may apply to the FSLIC to be treated as an "insured institution" for purposes of the Savings and Loan Holding Company Act. Upon submitting such an application, the institution will be considered to be an insured institution, and the holding company will thereafter be regulated as a savings and loan holding company rather than as a bank holding company under the Bank Holding Company Act.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 104(g)—INTERSTATE ACQUISITIONS

Existing law generally prohibits the FSLIC from approving an acquisition if the acquisition would result in a multiple savings and loan holding company controlling insured institutions in more than one State. The Conferees agreed to an amendment that would incorporate an existing exception to this general prohibition and add two new ones. These three exceptions are as follows:

First, as under existing law, the FSLIC may approve such an interstate acquisition under 406(f) or 408(m) of the National Housing Act.

Second, the FSLIC may approve such an interstate acquisition if as of March 5, 1987, the acquiring company controls an insured institution subsidiary with a home or branch office in the state of the institution to be acquired.

Third, paralleling the application of the Douglas Amendment to bank holding companies, the FSLIC may approve such an acquisition if the laws of the State in which the institution to be acquired is located specifically permit one of its State-chartered, FSLIC-insured institutions to be acquired by State-chartered institutions located in the State where the acquiring entity is located. This provision is very specific in how the FSLIC shall determine the location of the acquiring institution. This provision requires that the Corporation can approve the acquisition only if the laws of the State in which the institution to be acquired is located permits such an institution to be acquired by (1) a State-chartered institution located in the State where the acquiring State-chartered institution is located, (2) a savings and loan holding company located in the State where the acquiring savings and loan holding company is located, or (3) a holding company that controls the acquiring State-chartered institution located in a State where such holding company is located.

The Conferees intend that the law of the State in which the acquired institution is located must specifically provide for the acquisition of FSLIC insured institutions by entities not located in the state. Therefore the FSLIC may approve acquisitions only where the authority for such acquisition is determined solely from direct reading of the statute law of the State and not from interpretation, or implication of the statute.

No provision of section 104 should be construed as exempting any bank holding company (or any subsidiary or affiliate of a bank holding company) from the provisions of the Bank Holding Company Act.

SECTION 104(h)—EMERGENCY ACQUISITIONS

Section 104(h) amends section 408(m) of the National Housing Act to provide that acquisitions made under that authority will be subject to the requirements of section 408(c), which includes the qualified thrift lender test.

Except as noted in the paragraph below, section 408(m)(A)(i) preempts other provisions of Federal and State law that would have the effect of preventing a company from acquiring a failing thrift institution. Thus, for example, if a life insurance company invested in or acquired a thrift institution under section 408(m), that section would preempt any State law that would prevent the company from continuing to engage in the life insurance business because of that investment or acquisition. That section would not, however, preempt State restrictions on the percentage of an insurance company's assets that may be invested in any one subsidiary, or similar type safeguards.

Section 408(m) does not preempt section 408(e)(2), (l), or (m)(1)(A)(iii), or the provisions of Federal law with which those provisions are concerned. Thus, for example, under section 408(m)(1)(A)(iii), the acquisition of a thrift institution by a bank holding company requires the prior approval of the Federal Reserve Board under section 4(c)(8) of the Bank Holding Company Act and is subject to the Glass-Steagall Act and the nonbanking activity restrictions of section 4(c)(8).

SECTION 105—ADVANCES

The Senate amendment provides that, except as the Federal Home Loan Bank Board may prescribe, no member of a Federal Home Loan bank is eligible for advances from that bank unless the member meets the QTL test, or has acquired its principal assets from a savings bank chartered under State law before October 15, 1982, or is an FDIC-insured savings bank as defined in section 3(g) of the Federal Deposit Insurance Act.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts.

The House amendment permits a member institution which does not meet the QTL test to receive advances from its Federal Home Loan bank but restricts the amount of the advance. Such an institution would

be eligible for advances only to the extent that it holds QTL assets. For example, an institution with a 60 percent investment in QTL assets would satisfy the QTL test and therefore be eligible for 100 percent of the advances that it would otherwise be eligible to receive but for section 105. By contrast, an institution with a 59 percent investment in QTL assets would not satisfy the QTL test, but would nevertheless be eligible for 59 percent of the advances that it would otherwise be eligible to receive but for section 105.

This provision is intended to apply only prospectively. It does not affect advances or other extensions of credit made, or to be made, pursuant to binding agreements which were entered into by the Federal Home Loan banks prior to the enactment of this section.

For purposes of advances, the QTL requirement does not apply to (1) a savings bank as defined in section 3(g) of the Federal Deposit Insurance Act; (2) an insured institution, as defined in section 408(a)(1)(A) of the National Housing Act, which was chartered prior to October 15, 1982, as a savings bank under State law; or (3) an institution which acquired its principal assets from an institution which was chartered prior to October 15, 1982, as a savings bank under State law.

The phrase "Except as the Board may prescribe" appearing at the beginning of section 105 is intended to authorize the Board to exempt an institution from the QTL test requirement for obtaining Federal Home Loan bank advances in situations in which severe financial conditions threaten the stability of the institution.

SECTION 106—SECURITIES AFFILIATIONS OF FSLIC-INSURED INSTITUTIONS

The Senate amendment applies sections 20 and 32 of the Banking Act of 1933 to insured thrift instituions until March 1, 1988, in the same manner as if the insured institutions were member banks. The amendment does not affect affiliations or officer, director, or employee relationships established before March 5, 1987.

The moratorium on new affiliations of insured thrift institutions with firms principally engaged in certain securities activities is not intended to prohibit securities firms, insurance companies, or other companies already affiliated with such thrifts from continuing to sponsor, organize, establish, distribute, or underwrite new mutual funds, limited partnerships, separate accounts, or other commingled investment vehicles in the ordinary course of their securities, insurance, or other business. Although these entities would be affiliated with an insured thrift, their formation would not constitute the type of new affiliation that this provision is intended to prohibit during the moratorium, but rather is consistent with the maintenance of the status quo. Similarly, changes in directors, and other personnel of insured State nonmember banks and their securities firm affiliates may continue to be effected as long as they do not cause a new affiliation between such a bank and a securities firm.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts.

The House amendment permits the Washington Mutual Savings Bank, located in the State of Washington, a State-chartered savings bank which has a securities affiliate operation grandfathered under section 103 of this Act, to acquire one or more savings and loan associations. The Conferees do not intend to prohibit the acquisition of savings and loans solely because the acquiring institution, Washington Mutual Savings Bank, located in the State of Washington, has an affiliation with an organization principally engaged in securities activities.

The House amendment also exempts from this section the affiliation which would result from the acquisition of Peoples Savings and Loan Association of Owatonna, Minnesota, by Miller & Schroeder Financial Holdings, Inc.

The Conferees adopted an additional exemption for failed or failing FSLIC-insured thrift institutions, with total assets of at least $500 million, acquired under the emergency acquisition provisions of section 408(m) of the National Housing Act.

SECTION 107—MUTUAL HOLDING COMPANY AMENDMENTS

The Senate amendment authorizes the establishment of holding companies for FSLIC- or FDIC-insured mutual thrift institutions under the Savings and Loan Holding Company Act. The powers of such a parent include those of a multiple savings and loan holding company (except insurance activities) and of a bank holding company.

Under this seciton, an organization operating in mutual form may reorganize into a holding company by forming an interim stock savings bank to be wholly owned by the mutual, and transferring the assets and liabilities of the mutual to the stock. An insured mutual seeking to reorganize in this manner must provide the Federal Home Loan Bank Board 60 days prior written notice. Unless the Bank Board disapproves within the 60-day period, or extends the time, the application shall be deemed approved.

A corporation organized as a holding company under this subsection will be regulated as a savings and loan holding company, except that it may engage only in the activities permitted a savings and loan holding company (other than acquiring an insurance agency or escrow business). It may also invest in the stock of an insured institution, acquire a mutual institution through merger, merge with or acquire another savings and loan holding company (except that the resulting company will be subject to the activity restrictions of this section), and invest in a corporation whose stock is available for purchase by an insured institution pursuant to Federal or State law.

The Senate amendment also amends section 3 of the Bank Holding Company Act to provide that a FDIC-insured mutual savings bank or cooperative bank may reorganize to form a mutual bank holding company pursuant to the provisions available for the FSLIC-insured mutual association. The resulting mutual savings bank holding company will be regulated on the same basis as a stock savings bank holding company.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 108—LEASING AUTHORITY OF NATIONAL BANKS

The National Bank Act has been construed as allowing national banks to lease personal property to others only if the lease is the functional equivalent of a loan. See *M & M Leasing Corporation* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978). To ensure that national bank leasing transactions meet the functional equivalency requirement, the Comptroller of the Currency has imposed a strict "residual value" limitation—that is, a limitation on the extent to which a national bank may rely on the residual value of the leased property in order to recover its full investment in the property.

Section 108 provides national banks additional authority to engage in lease financing. This new authority would permit national banks to enter into such transactions on a "net " lease basis, as defined in the regulations of the Comptroller of the Currency (12 C.F.R. 7.3400), up to ten percent of the bank's assets. National banks would continue to be subject to the requirement that all leases be "net" leases, under which the bank may not provide maintenance, repair, or servicing of leased property. Section 108 is not intended to allow national banks to engage in the daily or short-term equipment or automobile rental business.

Section 108 provides leasing authority in addition to that already possessed by national banks, and would not limit the existing authority of national banks to engage in leasing transactions that are the functional equivalent of loans and satisfy the residual value and other limitations in the Comptroller's regulations.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 109—NOW ACCOUNTS FOR POLITICAL ORGANIZATIONS

The Senate amendment permits banks to offer interest-bearing demand deposit (NOW) accounts to non-profit organizations operated primarily for political purposes.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 110—EXEMPTION FROM AFFILIATE TRANSACTION RESTRICTIONS

The Senate amendment exempts FSLIC and FDIC-insured thrift institutions that are not controlled by a company and that are or become savings and loan holding companies from the statutory restrictions of section 408 (d), (f), and (g) of the National Housing Act.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment covers FSLIC-insured institutions and FDIC-insured institutions (organized as state-chartered savings banks or cooperative banks before October 15, 1982) which are subsidiaries of such institutions or whose voting stock is 80% owned by any company. The House amendment exempts such institutions from section 408 (d), (f), and (g) of the National Housing Act's restrictions on affiliate transactions, prohibits such institutions from purchasing a low-quality asset, as that term is defined in Section 23A of the Federal Reserve Act, and requires that transactions among affiliated institutions be on terms that are consistent with safe and sound practices.

In adopting these provisions the Conferees do not intend to override any Bank Board or FSLIC safety and soundness regulation. The Bank Board should review its safety and soundness regulations in this area and preserve any or all of them necessary to ensure safety and soundness of thrift institutions. Such regulations, however, should not conflict with statutory provisions, such as section 408(d)(6) of the National Housing Act, which require the prior approval of the FSLIC on a case-by-case basis of certain transactions between an insured institution and its affiliates.

SECTION 111—CONSIDERATION OF FSLIC-ARRANGED AND EMERGENCY ACQUISITIONS

The Senate amendment requires the FSLIC, in reviewing acquisitions or mergers of insured institutions, to consider the likelihood of loss or reduction of tax benefits of the institution's net operating loss carryforwards under sections 382 of the Internal Revenue Code of 1986 if the loss results from an acquisition or merger under section 406 (FSLIC-arranged acquisitions or mergers) or subsection 408(M) (emergency thrift acquisitions) of the National Housing Act. It specifies that FSLIC may disregard such potential loss of tax benefits if the acquirer provides written commitment to inject sufficient capital into the institution to maintain the rate of tangible equity capital to liabilities which exists at the time of the acquisition; if the acquisition is approved by holders of a majority of the voting stock of the institution; or if the acquisition is pursuant to section 406(f), section 408(m) or is otherwise deemed a supervisory case by FSLIC.

The House bill contains no similar provision.

The House recedes to the Senate with an amendment providing that, in addition to other factors which the FSLIC must consider, the FSLIC may consider the likelihood that the proposed acquisition will result in the loss of reduction of the insured institution's Net Operating Loss carryforward under Section 382 of the Internal Revenue Code of 1986. FSLIC may disregard such potential loss of tax benefits if the acquirer provides written commitment to inject sufficient capital into the institution to maintain the rate of tangible equity capital to liabilities which exists at the time of the acquisition; if the acquisition is approved by holders of a majority of the voting stock of the institution; or if the acquisition is pursuant to section 406(f), section 408(m), or is otherwise deemed a supervisory case by FSLIC.

SECTION 112—NATIONAL COMMISSION ON COMPETITIVENESS IN THE FINANCIAL SERVICES INDUSTRY

The Senate amendment required the President to appoint a commission on competitiveness in the financial services industry.

The House bill contains no similar provision. The Senate recedes to the House.

TITLE II—MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

SECTION 201—MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

The Senate amendment imposes a moratorium on certain securities, insurance, and real estate activities. The moratorium is retroactive to March 6, 1987, and ends on March 1, 1988.

The House bill contains no similar provision. The House recedes to the Senate with amendments as described below, which the Senate accepts.

SECTION 201(b)(1)—FOREIGN BANKS

The Senate amendment would have prohibited a foreign bank, or a foreign company controlling a foreign bank ("parent company"), that has grandfather rights under section 8(c) of the International Banking Act from expanding any activity in which it is engaged pursuant to that section and from commencing any new activity pursuant to that section. The Senate amendment would also have prohibited a foreign bank or parent company from acquiring additional shares of nonbanking companies pursuant to the investment authority accorded to foreign banks and bank holding companies by section 2(h)(2) of the Bank Holding Company Act. Section 2(h)(2) permits such a bank or company to engage in, or to invest in a nonfinancial company that engages in, nonfinancial activities in the United States.

The House bill contains no similar provision. The House recedes to the Senate with amendments as described below, which the Senate accepts.

Moratorium on Expansion of Grandfathered Activities by Acquisition

Section 8(c) of the International Banking Act permits a foreign bank or parent company to continue to engage in nonbanking activities in the United States in which it was lawfully engaged on July 26, 1978, even if those activities (e.g., underwriting corporate securities) are not permissible for U.S. banks or bank holding companies. Although section 8(c) does not authorize a foreign bank or parent company to expand its grandfathered activities by acquiring a going concern, the Federal Reserve Board has authority to permit such an acquisition under section 4(c)(9) of the Bank Holding Company Act.

The prohibition in the Senate amendment against expanding grandfathered activities has been modified so as to permit expansion de novo or by internal growth, but not by acquisition. Thus section 201(b)(1) prohibits a foreign bank or parent company that has grandfather rights under section 8(c) of the International Banking Act from expanding an activity in which it is engaged pursuant to that section by acquiring an interest in, or the assets of, a going concern during the moratorium period.

The prohibition in the Senate amendment against commencing new activities pursuant to grandfather rights under section 8(c) has been deleted as unnecessary. By their very terms, such rights can be used only to engage in those activities in which the foreign bank or parent company in question was engaged on the grandfather date; they cannot be used to commence a new and different activity.

Section 201(b)(1) does not apply to any "domestically-controlled affiliate covered in 1978", as defined in section 8(c). This exclusion is consistent with the decision made by the Congress in the Garn-St Germain Depository Institutions Act of 1982 to permit such a company to expand its activities by acquiring a going concern.

Application of Other Moratorium Provisions to Foreign Banks and Parent Companies

The securities, insurance, and real estate moratorium provisions (section 201(b)(2)-(6)) are amended to make it clear that they apply to the U.S. activities of foreign banks and parent companies, consistent with the policy of national treatment reflected in the International Banking Act. A foreign bank that maintains a U.S. branch, agency, or commercial lending company is treated like a bank holding company for purposes of the domestic nonbanking activity restrictions of the Bank Holding Company Act even if it does not control a U.S. bank.

Grandfather Rights Under the International Banking Act

Section 8(c) of the International Banking Act is amended to make it clear that a foreign bank or parent company loses its grandfather rights if it acquires control of a U.S. bank. The amendment to section 8(c) is made in section 204.

Investments Under Section 2(h)(2) of the Bank Holding Company Act

The Conferees deleted the provision of the Senate amendment that would have prohibited a foreign bank or parent company, during the moratorium period, from acquiring additional shares pursuant to section 2(h)(2) of the Bank Holding Company Act. Instead, section 2(h)(2) is amended to make it clear that that section cannot be used to acquire shares of a company engaged in any banking, securities, insurance, or other financial activities. The amendment to section 2(h)(2) is made in section 205.

SECTION 201(B)(2)—SECURITIES

The Senate amendment prohibits any Federal banking agency from taking any final action to approve an application by a bank holding company or insured bank to engage, during the moratorium period, to any extent whatever in the flotation, underwriting, public sale, or distribution of securities if the Federal banking agency could approve the activity in question only by determining that the entity that would conduct that activity would not be engaged principally in that activity.

The House bill contains no similar provision. The House recedes to the Senate with amendments as described below, which the Senate accepts.

The securities moratorium provision of the Senate amendment was broadened because of concern that the Federal banking agencies, particularly the Comptroller of the Currency, might expand securities activities of banks and their subsidiaries during the moratorium period based on a determination other than that specified in the Senate amendment (relating to the "engaged principally" standard). The Conferees were also concerned about a bank holding company's proposal to operate a system for trading options on U.S. Government securities.

During the moratorium period, section 201(b)(2) prohibits a Federal banking agency from authorizing or allowing (by action, inaction, or otherwise) a bank holding company, an insured bank, a foreign bank or parent company, or a subsidiary or affiliate of any of the foregoing from engaging in the United States to any extent whatever in any of the following:

(1) the flotation, underwriting, public sale, dealing in, or distribution of securities, if a Federal banking agency could approve the activity in question only by determining that the entity that would conduct that activity would not be engaged principally in that activity;

(2) any securities activity not legally authorized in writing before March 5, 1987; or

(3) operating a nondealer marketplace in options.

Item (2) does not, however, affect activities in which a bank holding company, an insured bank, a foreign bank or parent company, or a subsidiary or affiliate of any of the foregoing acts only as an agent; activities which were lawfully engaged in before March 5, 1987; or sales or transactions closed on or before June 30, 1987.

Section 201(b)(2) does not affect grandfather rights under section 8(c) of the International Banking Act, which are dealt with in sections 201(b)(1) and 204.

The moratorium should not be construed as effecting any permanent change in the law, or as a congressional judgment on whether a Federal banking agency does or does not have authority to permit a particu-

lar securities activity when the moratorium expires.

SECTION 201(b)(3)-(5)—INSURANCE

The Senate amendment prohibits a Federal banking agency from taking any final action to approve any rule, regulation, or order that would have the effect of increasing the insurance powers of banks, bank holding companies, or their subsidiaries, during the moratorium period, beyond those expressly authorized under section 4(c)(8)(A)-(G) of the Bank Holding Company Act.

Section 201(b)(4) specifically prohibits the Federal Reserve Board from approving, during the moratorium period, the acquisition by a bank holding company of any company, including a State-chartered bank, unless the bank holding company agrees to limit the acquired company's insurance activities to those permissible under section 4(c)(8). The prohibition is intended to ensure that a bank holding company cannot take advantage of the so-called "South Dakota loophole" during the moratorium by contending that the insurance restrictions in section 4(c)(8) do not apply to the activities of the holding company's subsidiary banks.

There are two limited exceptions to the general prohibition of section 201(b)(4). The Federal Reserve Board may (1) permit a State-chartered bank to be acquired by a bank holding company that is not a subsidiary of any other company, pursuant to a reorganization plan under which the bank's stockholders exchange their shares of a newly created bank holding company that is not a subidiary of any other company; and (2) permit a State-chartered bank to be acquired by a bank holding company that on March 6, 1987, controlled one or more State-chartered banks that have engaged in insurance activities identical to those of the newly acquired bank, even if the acquiring bank holding company does not agree to limit the bank's insurance activities to those permissible under section 4(c)(8). But neither of the exceptions is available unless the bank holding company agrees (A) to divest or terminate the bank's impermissible insurance activities within two years after acquiring the bank and (B) to limit the bank's insurance activities during that two-year period to the renewal of existing policies.

Section 201(b)(4) would not affect the authority of a bank holding company to engage in insurance activities permissible under section 4(c)(8), such as agency activities in a place of 5,000 or fewer people or by a bank holding company with total assets of $50 million or less.

Section 201(b)(5) provides that, during the moratorium period, a national bank may not expand its insurance agency activities into places where it was not conducting such activities as of March 5, 1987. Thus a national bank now operating an insurance agency in a place of 5,000 or fewer people may not expand its activities beyond that place. And a national bank engaged in activities beyond the place of 5,000 may not expand its insurance activities into places where it was not engaged in insurance activities as of March 5, 1987. The Conferees recognize that there is a court challenge to the Comptroller's authority to permit national banks in places of 5,000 or fewer to sell insurance outside that place. The moratorium is not intended to resolve the issue of the Comptroller's authority, which is a matter for the courts. That section does not, however, bar a national bank located in a place with a population of 5,000 or fewer from establishing, for the first time, an insurance subsidiary in such a place, so long as the insurance activities of that subsidiary remain confined to that place.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 201(B)(6)—REAL ESTATE

Section 201(b)(6) prohibits a Federal banking agency from taking any final action to approve any rule, regulation, or order that would have the effect of increasing the real estate powers of banks, bank holding companies, or their subsidiaries during the moratorium period.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 201(d)—INSURANCE AUTHORITY OF BANKING ORGANIZATIONS

Section 201(d) provides that the moratorium is not intended to resolve substantive issues involving the insurance powers of banks, bank holding companies, and their subsidiaries. Thus the expiration of the moratorium will not alter existing law regarding insurance powers, and no inference about existing powers should be drawn from the expiration.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 201(e)—INSURANCE ACTIVITY OF STATE-CHARTERED BANKS

The Senate amendment specifies that nothing in section 201 is to be construed so as to deny any State the authority to permit its State-chartered banks to engage in any insurance activity. It further specifies that neither the existence nor the expiration of the moratorium is to be construed as increasing, decreasing, or otherwise affecting the insurance authority of State-chartered bank subsidiaries of bank holding companies.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts. The amendment clarifies that section 201(e)(1) (relating to State authority over the insurance activities of State-chartered banks) applies only to State-chartered banks that are not subsidiaries of bank holding companies.

SECTION 202—AUTHORITY OF FEDERAL BANKING AGENCIES

The Senate amendment provides that nothing in section 201 is to be construed to prevent a Federal banking agency from issuing, pursuant to its existing authority, a rule, regulation, or order granting expanded securities, insurance, or real estate powers to banks or bank holding companies subject to the moratorium under section 201 if the agency specifies that the powers in question may not be exercised before the moratorium has expired. To come within this provision, the rule, regulation, or order must contain or otherwise be subject to such a specification. Thus if an application were approved by operation of law during the moratorium period (e.g., under section 3(b) or 4(c)(8) of the Bank Holding Company Act) because a Federal banking agency failed to approve or deny the application within the time provided by law, the approval would not authorize the applicant to engage after the mortatorium expires in activities proscribed under section 201.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 203—INTENT OF CONGRESS

The Senate amendment declares that the Senate, through its Committee on Banking, Housing, and Urban Affairs, intends to conduct a comprehensive review of banking and financial laws, and to make decisions on the need for financial restructuring legislation before the moratorium expires. The Senate amendment further declares that the Senate does not intend to renew or extend the moratorium.

The House bill contains no similar provision. The House recedes to the Senate with an amendment, which the Senate accepts. The amendment (1) broadens the provision so that it declares the intent of the Congress (and not simply that of the Senate), and (2) inserts a reference to the Committee on Banking, Finance and Urban Affairs of the House of Representatives parallel to the reference to the Committee on Banking, Housing, and Urban Affairs of the Senate.

SECTION 204—AMENDMENTS TO THE INTERNATIONAL BANKING ACT

In administering the International Banking Act, the Federal Reserve Board has consistently maintained that grandfather rights under section 8(c) terminate if the foreign bank or parent company that has such rights acquires control of a U.S. bank and thus becomes a bank holding company for purposes of the Bank Holding Company Act. Section 204 amends section 8(c) so as to codify that interpretation.

After acquiring control of a U.S. bank, a foreign bank or parent company has two years in which to bring its U.S. nonbanking activities into full compliance with section 4 of the Bank Holding Company Act (with the exception provided by section 2(h)(2) of that Act). Any activity grandfathered under section 8(c) that is not otherwise permissible for U.S. bank holding companies must be divested or discontinued; any grandfatherd activity that is permissible for U.S. bank holding companies may be continued only with appropriate regulatory approval or pursuant to exemptions otherwise available. The Federal Reserve Board has discretion to grant limited extensions of the two-year period. Both the two-year period and the authority for limited extensions are drawn from, and intended to have the same meaning as, the corresponding provisions of section 4(a)(2) of the Bank Holding Company Act, which apply to bank holding companies generally.

The changes made to existing law by sections 204 and 205 are permanent; they do not expire on March 1, 1988.

Section 204 was adopted in connection with the House amendment to section 201(b)(1).

SECTION 205—AMENDMENTS TO THE BANK HOLDING COMPANY ACT

Restriction of Investments Under Section 2(h)(2) to Nonfinancial Companies

Section 2(h)(2) of the Bank Holding Company Act permits a foreign bank or bank holding company that is "principally engaged" in banking outside the United States to acquire shares of a foreign company (the "investor company") that is principally engaged in business outside the United States, and permits the investor company to acquire shares of any company engaged in the same general line of business as the investor company or in a business related to that of the investor company. The Federal Reserve Board has interpreted "principally engaged" in section 2(h)(2) as meaning "more than 50 percent" engaged. 12 C.F.R. 211.23(f)(5)(i). Although the Conferees accept that interpretation for purposes of section 2(h)(2), they do not intend to express any judgment

on the meaning of "engaged principally" in the Glass-Steagall Act.

In keeping with the Federal Reserve Board's longstanding interpretation of section 2(h)(2), new section 2(h)(3) would specify that a company whose shares are held pursuant to section 2(h)(2) ("section 2(h)(2) company") cannot engage in—or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in—any banking, securities, insurance, or other financial activities in the United States. The Board is authorized to define "banking, securities, insurance, or other financial activities". The Conferees anticipate that the Board will define "other financial" activities in a manner similar to that in section 211.23(f)(5)(iii)(B) of the Board's Regulation K, which classified as "financial" certain real estate and other activities not specifically mentioned in new section 2(h)(3).

Section 2(h)(2) currently refers to "financial operations or types of activities". The corresponding provision of new section 2(h)(3) refers only to "financial activities". The Conferees deleted "operations or types of" as redundant; they did not thereby intend to narrow the prohibition.

Section 2(h)(3) does not prohibit a section 2(h)(2) company from continuing to hold shares that were lawfully acquired under section 2(h)(2) and applicable regulations as in effect before the date of enactment of the Competitive Equality Banking Act.

In amending section 2(h) of the Bank Holding Company Act, the Conferees do not intend to restrict the Federal Reserve Board's authority to grant further exemptions under section 4(c)(9) of the Bank Holding Company Act, including the exemption for noncontrolling interests held by a foreign bank holding company in a foreign nonbanking company principally engaged in business outside the United States. 12 C.F.R. 211.23(f)(5)(i). The amendments to section 2(h) are not intended to affect the scope of that and other exemptions available to foreign banks or bank holding companies under section 4 of the Bank Holding Company Act as currently implemented by the Board.

Joint Marketing Restrictions on Section 2(h)(2) Companies

Section 205 also limits joint marketing between (1) U.S. branches and agencies and U.S. bank subsidiaries of foreign banks or bank holding companies, and (2) U.S. nonfinancial companies controlled pursuant to section 2(h)(2). The restrictions are similar to those applicable under this Act to grandfathered nonbank banks and their affiliates.

Section 205 was adopted in connection with the House amendment to section 201(b)(1).

TITLE III—RECAPITALIZATION OF FSLIC

With several exceptions, the House bill and the Senate amendment are virtually identical. Rather than separately describing the provisions of each bill, the description below explains only the conference-reported bill, except when significant differences exist between the House and Senate.

SECTION 301—SHORT TITLE

This section designates this title as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987."

SECTION 302—FINANCING CORPORATION ESTABLISHED

Section 302 amends the Federal Home Loan Bank Act to add a new section 21 that requires the Federal Home Loan Banks ("FHLBanks" or "Banks") to invest in the newly created "Financing Corporation," which in turn will be required to invest in the Federal Savings and Loan Insurance Corporation ("FSLIC"). The Banks' investment will be lawful, notwithstanding limitations found elsewhere in the Federal Home Loan Bank Act.

Directorate

Under new section 21(b)(1), the Financing Corporation will be under the management of a Directorate, composed of three members, one of whom will be the Director of the Office of Finance of the Federal Home Loan Banks or his successor, and two of whom will be selected by the Federal Home Loan Bank Board from among the presidents of the FHLBanks. Each of the two FHLBank presidents selected to serve as members will be appointed for a term of one year. If any member leaves office, the member's service will terminate on the date such member leaves office and the successor to such member will serve the remainder of the member's term.

The president of any FHLBank cannot be appointed to serve an additional term on the Directorate until the president of each of the other FHLBanks has served as many terms as the president being selected to serve the additional term. The Chairman of the Federal Home Loan Bank Board will select the chairperson of the Directorate from among the three members.

Employees

The Financing Corporation will have no paid employees, and the Directorate can, with the approval of the Board, authorize the officers, employees, or agents of the FHLBanks to act on behalf of the Financing Corporation to perform the Financing Corporation's functions. Members of the Directorate will not receive any compensation from the Financing Corporation for their service on the Directorate.

Administrative Expenses

All administrative expenses of the Financing Corporation will be paid by the FHLBanks. The amount each FHLBank will pay will be determined by the Board with each bank paying a pro rata amount based upon its required stock investment in the Financing Corporation. Administrative expenses of the Financing Corporation do not include custodian fees in connection with the Financing Corporation's segregated account maintained to assure repayment of the principal of its obligations or the issuance costs of and the interest on its obligations.

The Directorate will be subject to the Board's regulations, orders, and directions.

Powers of the Financing Corporation

Under section 21(c), the Financing Corporation, subject to the other provisions of this section and to the regulations, orders and directions prescribed by the Board, is provided with corporate powers necessary and apropriate for its operations as a specialized corporate entity. Such corporate powers include the power to issue obligations in the form of nonvoting capital stock to the FHLBanks; to invest in any securities issued by the FSLIC; to borrow from the capital markets by issuing debt and to pay interest thereon and give security therefore; to impose assessments pursuant to subsection (f); and to exercise incidental powers necessary or appropriate to carry out the provisions of this section.

Capitalization of the Financing Corporation

Under section 21(d), each FHLBank will be required, as prescribed by the Board, to invest in the nonvoting capital stock of the Financing Corporation. Stock issued by the Financing Corporation to the FHLBanks will have a par value determined by the Board and will be transferable only among the FHLBanks as prescribed by the Board at not less than par. The cumulative amount of the Banks' investment in the Financing Corporation will be limited to $3.0 billion.

Limit on Investment by Each FHL Bank

Section 21(d)(3) limits the cumulative investment in the Financing Corporation by each Bank to the agregate of its legal reserves plus "undivided profits." This limitation will be calculated by adding each Bank's legal reserves on December 31, 1985, "undivided profits" on December 31, 1985, legal reserves after December 31, 1985, and "undivided profits" after December 31, 1985. Thus "legal reserves" and "undivided profits" for purposes of this calculation will include all retained earnings of the FHLBanks minus those amounts held in the dividend stabilization reserve as of December 31, 1985.

Pro Rata Distribution of First $1 Billion

Under section 21(d)(4), each FHLBank is required to purchase a specified percentage of the first $1 billion of stock in the Financing Corporation. The percentage of the first $1 billion that each Bank is required to invest in nonvoting capital stock of the Financing Corporation is derived from a formula taking into account each Bank's individual share of total FHLBank System retained earnings (minus their "dividend stabilization reserves") and the share of FSLIC-insured deposits held by each Bank's member institutions. By taking into account the shares of FSLIC-insured deposits held by a Bank's member institutions, the formula accommodates Bank's member institutions that are insured by the Federal Deposit Insurance Corporation.

Pro Rata Distribution of Amounts in Excess of $1 Billion

Allocation of the remaining stock purchases is based on the percentage of total assets of FSLIC-insured members represented at each bank under section 21(d)(5); however, no Bank will be required to exceed the limitation set forth in paragraph (d)(3). The aggregate amount of Financing Corporation stock that must be purchased by all of the FHLBanks is not reduced because of the limitation in that paragraph. Section 21(d)(6), described below, provides for a reallocation of stock purchases among Banks that have not reached their limits.

Section 21(d)(6) provides that if a FHLBank cannot purchase the full amount of stock in the Financing Corporation because that amount exceeded its legal reserve plus undivided profits, the amount that the Bank cannot purchase will be prorated for investment among the remaining Banks based upon their stock holdings in the Finance Corporation, as long as the cumulative amount of funds required to be invested by the remaining Banks does not exceed their legal reserves and undivided profits.

Any FHLBank that did not purchase the full amount of Financing Corporation stock as required under the formula in section 21(d)(5) will be required to purchase, annually at the issuance price, from those Banks to which such stock was reallocated, the

stock originally allocated to it. The amount of such stock repurchases among the FHLBanks, based upon the amount reallocated to and purchased and held by such Banks, the amount available for such purchases. The "amount available" includes all retained earnings of the Bank on whose behalf an investment has been made under subparagraph (A)(i), less certain amounts. The "amount available" does not include the Bank's special dividend stabilization reserve (as of December 31, 1985) listed under subparagraph (d)(7)(B), nor an amount of retained earnings equal to the amount of Financing Corporation capital stock already purchased by the Bank. Until the restricted Bank has fulfilled this repurchase obligation, it is prohibited from paying dividends in excess of one-half of its "net earnings available for dividends". Such funds not paid out in dividends are to be placed in a reserve account required by the Board.

Definitions: Net Earnings Available for Dividends; Undivided Profits

For purposes of subparagraph (F), "net earnings available for dividends" means net earnings after computing transfers to legal reserves. "Undivided profits" means retained earnings minus legal reserves and amounts held in the dividend stabilization reserve as of December 31, 1985. The dividend stabilization reserve is excluded from investment in the Financing Corporation because it includes funds, above the legal reserves, that had been determined not to be distributed in the year earned, so as to create a possible supplement to further years' dividends. This special dividend reserve will, however, have to be used completely before a FHLBank, subject to Board approval, can ever draw on its legal reserves under the circumstances outlined under section 206 of this title. To ensure that only the amount held in the dividend stabilization reserve as of December 31, 1985, is excluded from the amounts that may be invested in the Financing Corporation, the legislation specifically lists the amounts held by each FHLBank in its dividend stabilization reserve as of December 31, 1985.

Limitation on the Amount of Outstanding Obligations

Section 21(e)(1) sets forth the aggregate outstanding amount of obligations issued by the Financing Corporation, as determined by the Board. The House bill limits the borrowing authority to $5.0 billion. The Senate amendment limits the borrowing authority to $7.5 billion. The conference-reported title provides that the amount will not be permitted to exceed the lesser of (1) $10.825 billion or (2) the greater of (a) five times the Financing Corporation's outstanding nonvoting capital stock, or (b) the sum of the face amounts (which for zero-coupon instruments will be the principal payable at maturity) of obligations invested by the Financing Corporation and held in a segregated account pursuant to subsection (g)(2), whichever is less. The principal of all obligations shall be covered by zero coupon bonds as described in section 21(g)(2) set forth below. The second restriction described above permits the Financing Corporation to exceed a five-to-one leverage only if it purchased and held securities whose face amounts or amounts payable at maturity will at least equal the principal amount payable on all the outstanding Financing Corporation's debt, thereby ensuring that the debt principal will be repaid.

Annual Limitation on Net New Borrowing

Section 21(e)(2) sets forth limits on the annual amount of net new borrowing. The House bill limits the net new borrowing to $2.5 billion a year with a two-year sunset period. The Senate amendment limits the net new borrowing to $3.75 billion per year, also with a two-year sunset provision. The conference-reported title limits the net new borrowing authority to $3.75 billion annually, but without a sunset period.

Net Proceeds To Be Invested in Capital of FSLIC

Under section 21(e)(3), the net proceeds of obligations issued by the Financing Corporation are required, subject to terms and conditions approved by the Board, to be used to purchase capital certificates or capital stock issued by the FSLIC or to refund any previously issued obligation whose net proceeds were invested in capital certificates or capital stock of the FSLIC.

Limitation on Maturities

Under section 21(e)(4), no obligation of the Financing Corporation can be issued which will mature more than 30 years after the date of issue or after December 31, 2026.

Investment of United States Funds in Obligations

Pursuant to section 21(e)(5), obligations of the Financing Corporation (which will be issued only with the approval of the Board), like FHLBank obligations, will be lawful investments and can be accepted as security for all fiduciary, trust, and public funds, whose investment or deposit will be under the authority or control of the United States or any officers thereof.

Market for Obligations

Under section 21(e)(6), all persons having authority to invest, sell, underwrite, purchase, use as collateral, or deal in FHLBank obligations will have the same authorities with respect to Financing Corporation obligations. For example, such authority is given to commercial banks pursuant to 12 U.S.C. 24, paragraph 7, to State member banks pursuant to 12 U.S.C. 335, to federally-chartered thrift institutions pursuant to 12 U.S.C. 1464(c)(1)(D), and to Federal credit unions pursuant to 12 U.S.C. 1757(7). This gives these financial institutions the same authorities with respect to obligations of the Financing Corporation as they have with respect to obligations of the FHLBanks.

No Full Faith and Credit

Under section 21(e)(7), the Financing Corporation bears exclusive liability for its obligations and interest thereon. The Financing Corporation's obligations and interest thereon are not obligations of or guaranteed by the FHLBanks, the United States, or the Federal Savings and Loan Insurance Corporation.

Tax Exempt Status

Under section 21(e)(8), obligations of the Financing Corporation have the same tax status as obligations of the FHLBanks. Thus interest earned on those obligations is taxable as income at the Federal, but not the State level.

Obligations Are Exempt Securities

Under section 21(e)(9) instruments issued by the Financing Corporation are exempt securities under the provisions of the Federal securities laws administered by the Securities and Exchange Commission. This exemption is the same as that enjoyed by obligations of the FHLBanks.

Participation in Public Offerings

The conference-reported bill contains a provision which requires the Chairman of the Board and the Directorate of the Financing Corporation to ensure that minority-owned or minority-controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate significantly in any public offering of bond obligations. Both Senate and House bills contained language on this subject. The only difference between the Senate and House language is that the Senate language included minority commercial banks as eligible participants. Whereas the House receded to the Senate language in order to include the term minority commercial banks, it was agreed to by the Conferees that the House colloquy between Congressman St Germain and Congressman Gonzalez on the similar House provision which includes the definition of "minority" shall be the legislative history for this section. It is the intent of the Conferees that the term "minority" means any Black American, Native American, Hispanic American, or Asian American.

Assessment Authority of the Financing Corporation

The first part of section 21(f) authorizes the Financing Corporation to impose assessments on each FSLIC-insured institution. The Financing Corporation is authorized to assess each institution insured by the FSLIC an amount for each semiannual period equal to an amount not to exceed one-twelfth of 1 per centum of the total amount of all accounts of the insured members of such institution on an annual basis. The Financing Corporation is provided with additional exceptional authority to assess against each insured institution an additional amount for each semiannual period equal to an amount not to exceed one-eighth of 1 per centum of the total amount of all accounts of the insured members of such institution on an annual basis. This exceptional authority may be exercised only with Board approval and a vote by all the members of the Directorate of the Financing Corporation confirming that such assessments are necessary in order for the Financing Corporation to meet its interest payment obligations because no other sources of income are available.

On an annual basis, the maximum assessment rate is one-twelfth of 1 per centum plus one-eighth of 1 per centum, or 5/24 of 1 per centum of all accounts of the insured members of an institution. However, the assessment authority is further limited as described in the paragraph below.

The Financing Corporation may not collect assessments, whether regular or exceptional, in excess of the amount necessary to pay the interest on and issuance costs of its obligations, and custodian fees for the segregated account described in subsection (g). While the assessment rates are calculated on an annual basis, the assessments are authorized to be collected on a semiannual basis.

Exit Fees

Section 21(f)(4) addresses so-called "exit fees". The Senate bill contains no similar provision. The conferees adopt the House provision with the amendments noted below.

Section 21(f)(4) requires the Financing Corporation, with the approval of the Board, to assess an exit fee on any insured institution which ceases to be an institution

insured by the FSLIC. Such exit fee is not to exceed the sum of 2 times the last annual insurance premium plus the product of (1) the aggregate amount of all accounts of insured members of such institution (as of the date the institution ceases to be an insured institution) and (2) two times the rate at which the supplemental assessment was assessed against insured institutions by the FSLIC in 1986.

Reduction for Weakened Institutions

Also, the Financing Corporation may, at its sole discretion, reduce the amount of any exit fee imposed on an institution that ceases to be insured by FSLIC. The Financing Corporation may reduce such fees where the exiting institution poses a substantial risk to the assets of FSLIC and such reduction is necessary to assist in the sale for other disposition of the institution.

Total Exemption From Exit Fees

The House bill includes a "Grandfather Clause" which exempts from the imposition of this exit fee those institutions which, before March 31, 1987, have: been converted into, merged with, acquired by or combined with an FDIC-insured institution; filed an application or notice with the appropriate regulatory body pursuant to such conversion, merger, acquisition or combination; or, entered into a letter of intent or memorandum of understanding pursuant to such a transaction. The conferees adopted an amendment changing the grandfather date from *before* March 31, 1987, to *on or* before March 31, 1987.

It is the intention of the Conferees that Shelton Savings and Loan Association, Inc., meets the requirements of section 21(f)(4)(F)(iii).

Partial Refund of Exit Fee Paid

The House bill further provides that exit fees (or the equivalent thereof) paid prior to March 31, 1987 by grandfathered institutions in excess of those exit fees which would have been required under the present provision will be reimbursed to those exiting institutions. The conferees adopted a provision which moves the effective date from March 31, 1987 to date of enactment for purposes of this partial refund provision only.

Moratorium on Exiting FSLIC

The conference-reported title also provides in section 306(h) for a one-year moratorium beginning on the date of enactment during which no insured institution may voluntarily leave the FSLIC. The Conferees do not intend, however, to affect the authority of the FSLIC to liquidate or arrange emergency acquisitions of an association or insured institution. The moratorium also does not affect the ability of institutions grandfathered under section 21(f)(4)(F) to leave the FSLIC.

The Conferees do not intend to prevent institutions or the FSLIC from taking any preliminary steps necessary to effectuate a termination of FSLIC insurance upon expiration of the moratorium.

Permissible Investment Vehicles

Section 21(g) sets forth the use and disposition of assets of the Financing Corporation not invested in the FSLIC. Paragraph (1) authorizes the Financing Corporation to invest such assets in the same set of obligations and under the same conditions as FHLBanks are permitted to invest their reserves under the current Section 16 of the Federal Home Loan Bank Act. These investments include: (1) investments in zero-coupon instruments held in a segregated account as described below; and (2) short-term investments of the net proceeds of debt issued by the Financing Corporation prior to the purchase of FSLIC capital stock and certificates.

Zero Coupons To Assure Repayment of Principal

Under section 21(g)(2), the Financing Corporation will be required to invest in and hold in a segregated account, Treasury STRIPS or other noninterest bearing securities as described above, of which the total principal payable at maturity is approximately equal to the aggregate amount of principal on the Financing Corporation's obligations. The purpose of this segregated account is to assure the repayment of principal on the Financing Corporation's obligations.

Limitation on Investments in Zero Coupons

Paragraph (3) of this subsection limits the aggregate amount invested by the Financing Corporation under paragraph (2) and held in the segregated account to $2.2 billion.

Definitions

Issuance Costs

For purposes of section 21, "issuance costs" means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of any of the Financing Corporation's obligations, and includes legal and accounting expenses, trustee and fiscal and paying-agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses. Each of these costs must be incurred in connection with issuing any obligation.

Custodian Fees

For purposes of section 21, "custodian fees" means any fee incurred by the Financing Corporation in connection with the transfer of or maintenance of any security in the segregated account established under paragraph (2), and any other expense incurred in connection with the establishment and maintenance of the segregated account.

Tax Status of Financing Corporation

Under section 21(h)(1), the Financing Corporation will have the same tax status as the FHLBanks. The Secretary of the Treasury is authorized to prepare the necessary forms of stock, debentures, bonds, as approved by the Board, pursuant to section 23 of the Federal Home Loan Bank Act, for obligations of the Financing Corporation, as the Secretary of the Treasury is also so authorized for obligations of the FHLBanks.

Under section 21(h)(2), the Federal Reserve Banks will be authorized to act as depositories, custodians, and fiscal agents for the Financing Corporation in the general performance of its powers under this Act.

Treatment Under the Government Corporation Control Act

Section 21(h)(3) accords the Financing Corporation the same coverage under the Government Corporations Control Act as the FHLBanks are accorded under that Act pursuant to Section 11(j) of the Federal Home Loan Act (12 U.S.C. 1431(j)). Thus audits of the Financing Corporation by the General Accounting Office can be conducted although the Financing Corporation will have no Government capital invested in it. In addition, the Secretary of the Treasury, a Federal Reserve Bank, or a bank designated as a depository or fiscal agent of the United States Government has the authority to keep the Financing Corporation's accounts (although the Secretary of the Treasury can waive this provision regarding accounts).

In addition, before the Financing Corporation can issue obligations and offer them to the public, the Secretary of the Treasury will prescribe the various conditions to which the obligations will be subject (including the form, denomination, maturity, and interest rate), the way and time the obligations will be issued, and the price for which the obligations will be sold. This procedure is currently in place for the issuers who are subject to Section 9108(a) of title 31, United States Code (part of the Government Corporations Control Act) and in practice the Treasury generally approves the terms and conditions on obligations as proposed by these issuers.

Finally, before the Financing Corporation can buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than $100,000, the Secretary of the Treasury has to approve the purchase or sale, although the Secretary can waive this requirement. All of these authorities also pertain to the FHLBanks' issuance of debt.

Industry Advisory Committee

Pursuant to section 21(i), a Federal Savings and Loan Insurance Corporation Industry Advisory Committee will be created to review and make recommendations concerning the Board's activities, expenditures and receipts. Creation of the Committee offers FSLIC-insured institutions a means of contributing input, in a constructive and responsible manner, to the FSLIC. To enable the Committee to perform this function, it will have access to the new quarterly reports that the FSLIC will be required to prepare pursuant to section 402(k) of the National Housing Act.

The Committee, which is exempt from Federal Advisory Committee Act coverage, will consist of 13 members, one from each FHLBank District (to be elected annually by the selected members of each Bank's board of directors), plus the Chairman, who will be appointed each year by the chairman of the Board. All members have to be officers of FSLIC-insured institutions. Expenses incurred by members in connection with attending Committee meetings will be paid for by the FHLBanks, as specified by regulations issued by the Board. The Board is also empowered to prescribe regulations to guard against possible conflicts of interest that might arise from providing sensitive FSLIC data to industry representatives.

The Committee is required to report annually to Congress, and will cease to exist upon the dissolution of the Financing Corporation.

Termination of Financing Corporation

Section 21(j) requires dissolution of the Financing Corporation no later than the earlier of: (1) the date by which all stock purchased by the Financing Corporation in FSLIC has been retired; or (2) December 31, 2026. The Board, on behalf of the FLHBanks, is the successor to the powers of the Financing Corporation deemed necessary to settle and conclude the affairs of the Financing Corporation.

SECTION 303—MIXED OWNERSHIP GOVERNMENT CORPORATION

Section 303 will establish the status of the Financing Corporation as a "mixed ownership" government corporation, which is the same status accorded to FHLBanks, under the Government Corporations Control Act.

Although there is no government capital invested in the Financing Corporation, this category of "mixed ownership" has been accorded to the Financing Corporation to provide it with parallel legal status to that of the FHLBanks as described in the paragraph above analyzing section 21(h)(3).

SECTION 304—RECAPITALIZATION OF FSLIC

Issuance of Capital Certificates and Stock

Section 304 authorizes the FSLIC to issue equity in the form of redeemable non-voting capital stock and non-redeemable capital certificates. The non-voting capital stock will be issued in an amount equal to the aggregate investment by the FHLBanks in the Financing Corporation. The Financing Corporation will be the sole purchaser of both the capital certificates and the capital stock issued by the FSLIC, and proceeds paid to the FSLIC from that purchase will be included as part of the primary reserve of the FSLIC. The FSLIC will be prohibited from paying any dividends to the Financing Corporation on the capital certificates and stock.

Retirement of Stock; Equity Return Account

This section also will authorize the FSLIC to pay off and retire its capital stock upon maturity of all the obligations issued by the Financing Corporation. Since the FSLIC's capital certificates will be non-redeemable, the FSLIC will extinguish them with no payoff at the time the FSLIC retires the capital stock. FSLIC will be authorized to make such payoff of the retired capital stock solely with its contributions accumulated in its "equity return account," an account created under this title that can include annual contributions made by the FSLIC according to statutorily prescribed formulae. Any such contributions will be made at the end of each year beginning in 1997 and ending in the year during which the last obligation of the Financing Corporation matures.

Contributions made to the equity return account will not be included as FSLIC reserves. Such contribution amounts will be the only monies included in the equity return account. Any interest earned on the funds in the equity return account will be for the account of the FSLIC and will not be included as part of the equity return account, but will be added to the reserves of the FSLIC. While the contributions to the equity return account will be made annually as prescribed above, no payoff and retirement of FSLIC stock will be authorized to be made until the maturity of all Financing Corporation obligations.

Annual Contribution to the Equity Return Account

The formulae for the annual contributions are described below. No annual contributions can be required to be made if the FSLIC's reserves are less than 0.5 percent of all accounts of all insured members (as of December 31 of the preceding year). In any year in which the FSLIC's reserves are equal to 0.5 percent of all accounts of all insured members or greater (as of December 31 of the previous year), the contribution will be the amount invested by the Financing Corporation in FSLIC capital stock, divided by the number of years from the first year after 1996 that the reserves to accounts ratio reached 0.5 percent to the year in which the last obligation of the Financing Corporation matures (which can be no later than 2026).

Additional Contributions

Under certain circumstances, the title provides for additional contributions as determined by the Board. In any year in which the FSLIC's reserves are equal to 1.0 percent of all accounts of all insured members or greater up to and including 1.25 percent of all such accounts (as of December 31 of the preceding year), the additional contribution as determined by the Board can be a maximum of 6 percent per year compounded on the amount invested by the Financing Corporation in FSLIC capital stock computed from the year the investment was made to the year in which the last obligation of the Financing Corporation matures (not later than 2026), divided by the number of years from the first year after 1996 that the reserves to accounts ratio reached 1.0 percent to the year in which the last obligation of the Financing Corporation matures.

The title sets forth two other formulae for possible additional contributions if the reserves to accounts ratio of FSLIC were to increase, raising the percentage compounded and subtracting from these in the numerator of the fraction, the amounts already paid out in additional contributions. All these additional contributions, which will be above the repayment of the amount invested by the Financing Corporation in FSLIC capital stock will be subject to the discretion of the Board.

Section 304 also makes clear that the term "Financing Corporation" refers to the corporation chartered pursuant to section 302 of this legislation, new section 21 of the Federal Home Loan Bank Act.

SECTION 305—FSLIC AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS

This section limits the FSLIC's authority to collect premiums and assess additional premiums by reducing it by the amount the Financing Corporation assesses. Thus no institution can be required to pay on an annual basis more than a premium of one-twelfth of one percent, plus an additional premium of one-eighth of one percent, whether the premiums are paid to the FSLIC, the Financing Corporation, or a combination of both. As under current law, the imposition of the one-eighth of one percent assessment will be limited to special circumstances.

SECTION 306—MISCELLANEOUS PROVISIONS

Section 306 will amend section 16 of the Federal Home Loan Bank Act to allow the Board, under certain circumstances, to authorize a FHLBank to declare and pay dividends out of its undivided profits or legal reserves, but only after such Bank has reduced all other reserves (e.g., the dividend stabilization reserve) to zero. Such an extraordinary dividend may be permitted where (1) a FHLBank incurs a charge off related to its investment in the Financing Corporation and (2) the Board determines there is an extraordinary need for payment of such dividends. Any such use of undivided profits or legal reserves will not affect the requirements for FHLBanks' investments in Financing Corporation stock.

Section 306(b) is meant to clarify that the sentences referring to the retirement of capital stock in subsection 402(h) of the National Housing Act do not cover either FSLIC stock or FSLIC certificates issued pursuant to this Act.

Phase-Down of the Special Assessment

Section 305(c) provides for a five-year phase-down (from 1987 through 1991) of the Special Assessment that FSLIC may charge (but not the special assessment that the Financing Corporation may charge), unless the Federal Home Loan Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds to the FSLIC. The Conferees believe that it is consistent with the Board's authority under section 404(c) for the Board to postpone the reduction in the special assessment until 1988, if the Board determines that such a postponement will improve the financing environment for selling obligations of the Financing Corporation.

Priority Lien Position for FHL Banks

Section 306(d) recognizes the special position of the FHLBanks as a lender of last resort and grants the FHL Banks a priority line position, unless another creditor has obtained a perfected security interest in the property.

Section 306 (e), (f) and (g) contain technical and conforming amendments.

Moratorium on Exiting FSLIC

Section 306(h) contains the FSLIC exit fee and insurance termination moratorium discussed above.

Reports to Congress

Section 306(i) requires the FSLIC to report to Congress.

SECTION 307—SECONDARY RESERVE

The Conferees adopted an amendment offered by the House which permits insured institutions to offset against assessments the amounts that were previously part of the so-called "secondary reserve". The amount of the secondary reserve is referred to as the "statutorily prescribed amount". This amount is currently approximately $824 million but will decrease each year by the amount restored to FSLIC-insured institutions.

Under the amendment, institutions would be permitted to reduce or offset the amount of premiums they would otherwise pay to FSLIC—not the Financing Corporation—each year. There are two limitations to the premium offset during the initial 5 years. First, the offset may only apply to the special assessments charged by the FSLIC under section 404(c) of the National Housing Act, and not to the regular assessments charged under section 404(b) of the National Housing Act. Second, the offset will be limited in each of these 5 years to no more than 20% of the "statutorily prescribed amount".

After 5 years, the institution's pro rate share of the remaining "statutorily prescribed amount" may be offset against both special and regular assessments imposed by the FSLIC without any annual maximum amount limitation.

TITLE IV—THRIFT INDUSTRY RECOVERY ACT

The House Bill and the Senate amendment provide an approach for dealing with troubled but well-managed and viable thrifts in those areas of the country which have weakened economies due to slumps in the energy, agricultural, and real estate markets. The overall objective of the two approaches is to maximize the long-term viability of the thrift industry at the lowest cost to the Federal Savings and Loan Insurance Corporation (FSLIC). The House bill seeks, by specific statutory criteria, to deal with potential areas for regulatory changes and supervisory reforms. The Senate approach fully preserves the independent reg-

ulatory agency concept and suggested guidelines in a number of areas.

The Senate recedes to the House with an amendment which the House accepts with an amendment which the Senate accepts.

The conference-reported bill requires the Fedeal Home Loan Bank Board (Bank Board) to promulgate thrift accounting requirements consistent with Generally Accepted Accounting Principles (GAAP), as modified by the commercial bank regulators; provides capital forbearance to viable and well-managed thrifts, including the use of Capital Certificates and Warrants; and establishes an appeals process for the timely review of grievances related to the determination of appraisals, asset classifications, and loss allowances.

The bill provides for audits of the Federal Asset Disposition Association by the General Accounting Office; new appraisal standards consistent with the practices of commercial bank regulators; increased utilization of minority thrifts as depositories for Government funds; improved disclosure and control of outside consultants, counsel, and contractors; oversight and reporting requirements, and authority for the Bank Board to establish capital requirements consistent with the commercial bank regulators.

SECTION 402—THRIFT INSTITUTION ACCOUNTING, APPRAISAL, AND RESERVE STANDARDS

This section requires the Bank Board and FSLIC to formulate regulations for the eventual application of GAAP to all thrift institutions. These regulations are to be applied to thrifts to the same degree that GAAP standards are used by the regulators of commercial banks, while recognizing that the regulatory accounting principles prescribed by the various federal financial regulatory agencies may not be uniform.

The Bank Board must implement a new classification of assets regulation that is consistent with the practices of the commercial bank regulators. Under this new system, the Principal Supervisory Agent is to have the option to direct the creation of additional general loss reserves based on a review of an insured thrift's overall portfolio.

Thrifts are to be allowed to use Financial Accounting Standards Board (FASB) pronouncement numbers 15 and 5 for troubled debt restructuring. Current Bank Board regulatory practices do not encourage institutions to restructure problem loans and account for their restructuring with FASB-15 and FASB-5, accounting methods consistent with GAAP. With real estate portfolios suffering in many states, the use of FASB-15 may allow a savings institution to avoid loan loss recognition where economic conditions require that borrowers restructure or work out their loans.

The Bank Board may not require an institution to write down assets or establish reserves against assets if these regulatory actions would result in an amount that would be greater than the amount required under GAAP, unless that practice is consistent with commercial bank regulatory actions. The Bank Board's R41(c) memorandum, and its accompanying classification of assets regulations, have given the Bank Board the authority to require a thrift to obtain a "current market" value appraisal on a property and then adjust the loan value to the new R41(c) appraisal. In a depressed economy, where market values are a fraction of what they were several years ago, regulations such as the R41(c) memorandum and the classification of assets regulation have resulted in severe write-downs of many institutions' net worth. This devaluation occurs even though the underlying collateral is income-producing and the debt servicing may have been maintained. The use of GAAP allows a loan to be carried at the lesser of cost or either (1) net realizable value (discounted value based on cash flow), or (2) a carrying value in accordance with FASB-15 debt restructuring where the original obligor has remained in place. This section requires a change of Bank Board regulations and mandates the use of GAAP to the same degree to which GAAP is used by commercial banking regulators.

SECTION 403—AUDIT OF FEDERAL ASSET DISPOSITION ASSOCIATION

This section clarifies that the Federal Asset Disposition Association (FADA) is required to submit to audits by the Comptroller General of the United States (General Accounting Office). Currently, FADA reports to the Bank Board.

SECTION 404—THRIFT INDUSTRY RECOVERY REGULATIONS

This section provides a capital recovery program for thrift institutions suffering from a weakened financial condition primarily related to the depressed economy in the regional areas in which the institutions operate. Thrifts wishing to receive forbearance must submit a plan to the Bank Board. Regulations implementing this program are to be written with the intent to maximize the long-term viability of the thrift industry at the lowest cost to the FSLIC.

The capital recovery program is not intended to restrict any authority of the Bank Board to correct any fraud, criminal activity, imprudent operating practices or managerial incompetence.

The capital recovery program is also specifically expanded to include well-managed and viable minority thrift institutions primarily serving minority communities.

SECTION 405—CAPITAL INSTRUMENT PURCHASE PROGRAM

This section affirms Congressional support for the Bank Board's use of capital certificates for thrifts participating in the capital recovery program. The Bank Board will negotiate warrants and acquire capital certificates that will allow a savings and loan the opportunity to achieve a workable capital level.

SECTION 406—MINIMUM CAPITAL REQUIREMENTS

This section provides the FSLIC with the same authority held by the commercial bank regulators with respect to minimum capital requirements, under section 908 of the International Lending Supervision Act of 1983.

SECTION 407—IMPROVEMENTS IN THE SUPERVISORY PROCESS

The Bank Board is required to issue guidelines which:

(a) expedite or eliminate the approval process for renegotiated loans where a supervisory agreement is in effect,

(b) provide that other sources of credit be considered in analyzing the financial capability of a borrower for recourse loans,

(c) establish an appraisal review system, and

(d) eliminate, in large part, the scheduled item system.

In addition to the foregoing improvements in the supervisory process, this section also provides for the establishment of an informal review process for certain supervisory decisions. Any institution may obtain a prompt review by an independent arbiter—or a panel of independent arbiters—of any determination made by an examiner or supervisory agent related to the appraisal values, asset classification or loan loss reserves. Upon receipt of recommendations by the arbiter or panel of independent arbiters, the Principal Supervisory Agent (PSA) makes a final decision which is nonappealable. The conferees expect that the request for review be brought in food faith and not for the purpose of attempting to forestall as appropriate supervisory determination.

To expedite the appeals process and reduce costs, the PSA may consolidate multiple appeals by one institution or related appeals by different institutions.

SECTION 408—PREVENTION OF INSOLVENCIES

This section requires the Bank Board to transmit a report six months following the date of enactment on the steps the Bank Board has taken to prevent any further insolvencies. In the report required by this section, the Bank Board must provide recommendations for possible further legislative action to maintain and strengthen the savings and loan industry.

SECTION 409—FEASIBILITY STUDY RELATING TO ESTABLISHMENT OF ASSET HOLDING CORPORATION

The Bank Board is required to perform a feasibility study on establishing an asset holding corporation that would acquire assets of troubled or failed thrift institutions. Findings and conclusions of the study, including any suggestions for legislative changes must be submitted to the House and Senate Banking Committees no later than 6 months after enactment. Factors such as cost of such an operation, standards for eligible real estate assets and equity participants in such a corporation by thrift institutions must be considered.

SECTION 410—NOTICE AND DISAPPROVAL PROCEDURE REQUIRED FOR ALL APPLICATIONS TO THE BANK BOARD

Not later than 60 days after enactment, the Bank Board shall submit a report to the House and Senate Banking Committees and promulgate guidelines on the appropriate time period for processing all applications. Also, with regard to the application for debt issuance, any such application shall be deemed to be approved if not disapproved by the Board within 60 days.

SECTION 411—GUIDELINES FOR ASSET DISPOSITION

This section requires that, six months following passage of this Act, the Bank Board provide a report to the Congress and implement guidelines to ensure that assets taken from closed savings and loans are not "dumped" into already depressed markets.

SECTION 412—EXPANSION OF USE OF UNDERUTILIZED MINORITY THRIFT INSTITUTIONS

This section requires Treasury to consult with the Bank Board regarding methods to increase the use of underutilized minority thrift institutions as depositaries or financial agents of federal agencies.

SECTION 413 AUTHORITY OF INDEPENDENT CONTRACTORS, CONSULTANTS, AND COUNSEL

This section requires a standard disclosure of the legal status of consultants, counsel and contractors hired by FSLIC-authorized conservatorships or receiverships to manage or liquidate the assets of troubled or failed institutions. The intent of this section is to make such information more readily available to those negotiating with consultants and others hired to manage a failing or failed institution.

SECTION 414—EXTENSION OF FORBEARANCE PREVIOUSLY PROVIDED IN THE ACQUISITION OF TROUBLED THRIFT INSTITUTIONS

This section extends, for an additional 5 years, recovery measures originally granted to an institution as a result of an agreement governing a supervisory action with respect to a merger, consolidation, transfer, or acquisition of an insured institution on or before March 31, 1987. The recovery measures will be extended only if the acquiring or resulting insured institution can show that the failure to meet any requirement, restriction, or limitation specified in the original agreement is attributable to the assets or liabilities which were acquired or assumed.

SECTION 415—CONGRESSIONAL OVERSIGHT

The Committees on Banking, Finance and Urban Affairs of the House of Representatives and Banking, Housing, and Urban Affairs of the Senate will monitor and review the implementation of the appeals process pursuant to section 407 of the Act. The Bank Board is required to report on the activities of the Federal Home Loan Bank System and all its related entities, including the Federal Asset Disposition Association, on an annual basis, except that reports shall be filed at six-month intervals during the first year.

The Bank Board is required to appear annually before the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs to describe and explain each such agency's plans and proposals with respect to administrative expenses for such fiscal year.

SECTION 416—SUNSET

The Conferees agree to an amendment that would sunset certain provisions of Title IV. The sunset would take effect when the Financing Corporation issues the last obligations under its $10.825 billion borrowing authority. (With the $3.75 billion annual borrowing cap, the sunset could not occur for at least 2.5 years.)

The sunsetted provisions are parts of sections 402(a) and (b); sections 404(a) and (b); section 405; section 407(d); and section 411. The relevant parts of sections 402 (a) and (b) are new sections 9 (a)(2), (a)(3), and (a)(5) of the Home Owners Loan Act for federally chartered thrifts, and the parallel provisions for State-chartered thrifts, new sections 415 (a)(2), (a)(3), and (a)(5) of the National Housing Act.

The sunset of these provisions does not affect the authority of the Federal Home Loan Bank Board or the FSLIC under other provisions of law to prescribe rules or regulations in the areas covered by these provisions. Thus they may reinstate, modify, or delete any rules or regulations promulgated before the sunset in these areas to the extent permitted by other provisions of law.

TITLE V—FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS

Conferees Note: During the 99th Congress, the House passed legislation to enhance and expand the emergency interstate acquisition provisions of the Garn-St Germain Depository Institutions Act of 1982 and to exempt banking regulators from apportionment by the Office of Management and Budget (See Title II of H.R. 5576, the FSLIC Recapitalization Act, and Section 3 of H.R. 4917, the Depository Institutions examination Improvement Act.) The provisions of the House-passed legislation are generally similar to the provisions of Title V of this Act.

SECTION 501—SHORT TITLE

The Senate amendment designates this title of the Act as the "Financial Institutions Emergency Acquisitions Amendments of 1987."

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 502—FDIC-ASSISTED EMERGENCY INTERSTATE ACQUISITIONS

The House bill does not contain any amendments to the Federal Deposit Insurance Act similar to the Senate amendment described below. The House recedes to the Senate on these provisions.

Section 13(f) of the Federal Deposit Insurance Act, which was enacted in 1982 as part of Title I of the Garn-St Germain Depository Institution Act of 1982 and would be reinstated by section 509, permitted interstate acquisitions of banks with assets of $500 million or more—but only under limited conditions. Stock institutions, including all eligible commercial banks, could be acquired only if they were closed. An eligible mutual savings bank could be acquired prior to closing—but only if its board of trustees and chartering authority specified in writing that it was in danger of closing and requested the FDIC to assist in acquisition or merger. If a bank was acquired by an out-of-state bank holding company the bank could branch throughout the State to the same extent as an in-state national bank. Without specific State authorizing legislation, however, bank holding companies could not be acquired by out-of-state holding companies and an out-of-state holding company that acquired a bank under section 13(f) could not expand in the State other than by branching of the newly acquired bank. This meant in unit banking States, the out-of-state bank holding company's entry was limited to the existing office site of the bank it acquired.

The Senate Amendment amends section 13(f) of the Federal Deposit Insurance Act to change the 1982 Garn-St Germain legislation in three crucial areas. First, the amendments permit out-of-state holding companies to acquire qualified stock institutions, as well as mutual savings banks, before they fail. Second, the amendments permit a holding company to be sold, in whole or in part, to an out-of-state holding company if the in-state holding company has a bank subsidiary or subsidiaries with aggregate banking assets of $500 million or more "in danger of closing" and such bank or banks represents 33% or more of the holding company's banking assets. Finally, they allow an acquiring out-of-state bank holding company expansion rights in the State of acquisition through the bank holding company structure and they prevent regional compact restrictions from applying to a holding company that makes an acquisition under the emergency authority. More specifically, section 13(f) would be amended by section 502 as follows:

ASSISTED EMERGENCY INTERSTATE ACQUISITIONS

SECTION 13(F)(1) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate Amendment to subsection 13(f)(1) provides that the provisions of the section shall be used only where the FDIC provides financial assistance for an out-of-state acquisition or merger: otherwise the section is not applicable.

The Senate bill contained a paragraph that specified the enactment of the emergency interstate acquisition provisions did not prevent the FDIC from assisting an interstate acquisition under state law, where permitted. The conferees deleted this paragraph as unnecessary. The emergency acquisition provisions are intended to provide the FDIC with greater flexibility in handling closed or failing banks. The conferees recognize that alternatively the FDIC may use applicable state laws for an interstate acquisition, where it determines such laws are more advantageous toward resolving an existing problem.

CLOSED BANK ASSISTANCE

SECTION 13(f)(2) OF THE FEDERAL DEPOSIT INSURANCE ACT

Section 13(f)(2) is unchanged from existing law.

EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF CLOSING

SECTION 13(f)(3)(A) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate Amendment extends the emergency interstate acquisition provisions to all banks with assets of $500 million or more that, although not closed, have been determined by their Federal or State chartering authority to be "in danger of closing." It allows out-of-banks and holding companies to either establish a new bank to acquire the bank in danger of closing or to allow an acquisition to be done directly. It also permits the acquisition of two or more affiliated insured banks in danger of closing which have aggregate total assets of $500 million or more and if the aggregate total assets of the acquired banks is equal to or greater than 33 percent of the aggregate total assets of all insured banks.

Experience has demonstrated that by the time a bank has actually been closed, the value of its franchise may have been dissipated, if not eliminated. In addition, the process of decline into insolvency can adversely affect the financial community. By permitting an interstate acquisition of a commercial bank in danger of closing, but before it is actually closed, the potential for finding a private solution with a lesser commitment of FDIC funds is substantially improved. Such a process would also help maintain the stability of and confidence in the banking system as a whole.

EMERGENCY ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE

SECTION 13(f)(3)(B) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment extends the emergency interstate acquisition provisions to holding companies that have a subsidiary bank or banks with aggregate assets of $500 million or more in danger of closing and such bank or banks represent 33% or more of the total assets of the holding company's banking subsidiaries. If the Federal or State chartering authority has determined that such a bank or banks are in danger of closing, an out-of-state bank or holding company may (a) purchase the stock of or otherwise acquire the holding company that controls such banks or banks as well as all of such holding company's other subsidiary banks or (b) acquire the only bank or banks in danger of closing.

An out-of-state bank or holding company that purchases from another holding company a bank or banks in danger of closing with aggregate assets of $500 million or more under item (b) above would be permitted to acquire other bank subsidiaries of the holding company. Under this subparagraph, more than one out-of-state holding company may acquire portions of a single holding

company, so long as the out-of-state holding companies combined purchase subsidiary banks, each of which is in danger of closing, that have total assets of $500 million or more, and provided that those subsidiary banks account for at least 33% of the assets of all bank subsidiaries of the holding company.

REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS

SECTION 13(f)(3)(C) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment requires the Board of Directors of the bank in danger of closing to request in writing that the FDIC assist a merger or purchase before the FDIC can provide such assistance.

CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED

SECTION 13(f)(3)(D) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment provides that if a bank holding company is eligible to be acquired by an out-of-state bank or holding company under subparagraph (B), so long as FDIC assistance remains outstanding, the bank, its holding company, and its bank affiliates can be sold to an out-of-state bank or holding company to the same extent it could have been when assistance was given. This provision applies only when the FDIC provides financial assistance after the date of enactment of the Emergency Acquisition Amendments of 1987. Such acquisitions would require the consent of the FDIC.

STATE BANK SUPERVISOR APPROVAL

SECTION 13(f)(3)(E) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment provides that the FDIC may not authorize a merger or acquisition of a failing bank or its holding company without the concurrence of the State bank supervisor of the State in which the bank in danger of closing is chartered.

OTHER REQUIREMENTS NOT AFFECTED

SECTION 13(f)(3)(F) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment provides that where otherwise lawfully required, an emergency acquisition under this paragraph is subject to the same approval process by the primary Federal or State supervisor of each party to such acquisition as would be required if the acquisition were not an acquisition under this paragraph.

ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS

SECTION 13(f)(4)(A) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment confirms that a multiple savings and loan holding company can acquire an FDIC-insured Federal savings bank across State lines.

SUBSEQUENT NONEMERGENCY ACQUISITIONS SUBJECT TO STATE LAW

SECTION 13(f)(4)(D) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment provides that an out-of-state holding company that acquires a bank or holding company under section 13(f) may, two years after the acquisition or any earlier time that may be allowed by State law for out-of-state holding companies that have acquired in-State banks, acquire additional banks and establish branches in the State to the same extent that a holding company located in each of those States may expand.

CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE

SECTION 13(f)(4)(E) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment provides that an out-of-state bank or holding company that acquires and retains control, directly or indirectly, of a bank under this subsection shall not be required under State law, as a result of such acquisition, to divest any other bank or be prevented from acquiring any other bank in a different State. This paragraph does not prevent requiring divestiture to comply with competitive, antitrust, and similar standards imposed under Federal law.

This provision, which was not contained in the 1982 law, is in response to State law developments after passage of Garn-St Germain, and is necessary to enable a number of banks to make acquisitions under Garn-St Germain. The regional interstate banking laws of several States require that all of a bank holding company's subsidiary banks be located within a defined region. Accordingly, an out-of-state holding company prevented from further expansion within the region which has acquired a bank in such a State would be required to divest that bank if it made an acquisition under Garn-St Germain outside the region. This provision would preempt such State laws only with respect to interstate acquisitions under section 13(f).

RECIPROCAL BANK PACTS AND MINORITY BANK OWNERSHIP TAKEN INTO ACCOUNT IN BIDDING PRIORITIES

SECTION 13(f)(6)(B) AND (C) OF THE FEDERAL DEPOSIT INSURANCE ACT

Under current law, there are certain priorities to be considered before assisting an interstate merger. Among these were geographic and structural considerations. In general, those priorities were as follows:

institutions of the same type within the same State;

institutions of the same type in different States;

institutions of different types in the same State; and

institutions of different types in different States.

Also, in considering offers from different States the FDIC was to give a priority to offers from adjoining States.

The Senate amendment modifies this by providing that in considering the various specified priorities, the order of geographic priorities is changed to prefer institutions from States with laws that specifically authorize interstate acquisitions (or, in the absence of such laws, institutions in contiguous States) over institutions from other States. Also, the Senate Amendment provides that, in the case of minority-controlled banks, the FDIC must seek an offer from another minority-controlled bank before applying the geographic priorities.

NO ASSISTANCE AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES

SECTION 13(f)(9) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment confirms that FDIC assistance in a transaction authorized under section 13(f) shall not be provided to any subsidiary of a holding company which is not an insured bank. This amendment is not, however, intended to prevent an intermediate holding company from being a conduit for FDIC assistance ultimately intended for an insured bank.

BANK IN DANGER OF CLOSING AND WHEN BANKS ARE AFFILIATED FOR PURPOSES OF HOLDING COMPANY ACQUISITIONS DEFINED

SECTION 13(f)(8)(D) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment defines when a bank is "in danger of closing" and defines when banks are affiliated for purposes of holding company acquisitions.

REPORTS REQUIRED

SECTION 13(f)(10)

The Senate amendment requires that the FDIC's annual report to the congressional banking committees include a report on transactions that have taken place under section 13(f) during the prior year.

WAIVER OF NOTICE AND HEARING REQUIREMENTS—AMENDMENTS TO THE BANK HOLDING COMPANY ACT

The Senate amendment authorizes the Federal Reserve Board to waive the requirements of notice to the appropriate chartering authority and opportunity for hearing ordinarily applicable to the acquisition by a bank holding company of a bank under section 3 of the Bank Holding Company Act for any acquisition authorized under the emergency provisions of section 13(f) of the Federal Deposit Insurance Act. This would enable the Federal Reserve to waive the notice and hearing requirements of the Bank Holding Company Act in the event an out-of-state bank holding company has acquired not only the failing bank but also the parent holding company and its other subsidiary banks. In addition the Federal Reserve is authorized to shorten the post-approval waiting period required under section 11 of the Bank Holding Company Act for an acquisition pursuant to section 13(f) and to waive that period entirely to permit immediate acquisition of any or all of the banks to be acquired where the Federal Reserve, with the concurrence of the Attorney General, finds that immediate action is necessary to prevent the probable failure of any of the banks acquired under section 13(f).

Finally, section 502 permits the Federal Reserve Board to waive the provisions of section 4(c)(8) of the Bank Holding Company Act that require notice and opportunity for hearing prior to the acquisition by a bank holding company of a nonbanking company where the proposed acquisition is in connection with an application by a bank hold company to acquire a bank in danger of closing.

The House bill contains no similar provision: The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment insures review of assisted mergers, acquisitions, or consolidations for consistency with the antitrust laws. The provision limits the authority of the Federal Reserve Board to preclude the filing of an action under the antitrust laws.

The FDIC is required to immediately notify the Federal Reserve Board when the FDIC considers assisting a specific transaction in order to prevent the failure of a bank or a bank holding company. Upon receiving such notice, the Federal Reserve Board shall immediately notify the Attorney General and provide to the Attorney General and provide to the Attorney General the information available to the Board and the FDIC which bears upon the antitrust implications of the tranaction. Within five days the Attorney General must provide the Federal Reserve Board with preliminary findings.

The Federal Reserve Board may reduce the post-approval waiting period from 30 days to 5 days. Since antitrust actions can only be filed during the post-approval waiting period, the Conferees believe that less than 5 days would be insufficient time for interested parties to review the transaction and to file actions. The Conferees recognize that extraordinary circumstances may warrant the immediate consummation of the transaction. Therefore, the House amendments permits the Federal Reserve Board to reduce the post-approval waiting period to less than five days but only if the Attorney General concurs in that action.

The House amendment strikes prudent balances between antitrust considerations and the need to facilitate a rapid transaction. By withholding his concurrence, the Attorney General can preserve the opportunity for interested parties to file an action under the antitrust laws. If in the opinion of the Attorney General no substantial antitrust considerations are raised by the transaction, it can be consummated immediately.

SECTION 503—BRIDGE BANKS

SECTION 11(i) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment creates a new vehicle, called a "bridge bank", for dealing with bank failures. This vehicle enables the FDIC to bridge the gap between the failed bank and a satisfactory purchase-and-assumption or other transaction that cannot be accomplished at the time of failure.

A bridge bank is a new national bank established by the FDIC to take over the assets and liabilities of a failed bank and to carry on its business for a limited time. The FDIC may establish a bridge bank only if it finds that:

(1) the net cost of reorganizing and operating a bridge bank will not exceed the cost of liquidating the failed bank, including paying its insured accounts;

(2) the continued operation of the failed bank is essential to provide adequate banking services in its community; or

(3) the continued operation of the failed bank is in the best interest of the depositors of the closed bank and the public.

Although bridge banks have all the power of other national banks, they do not always have capital. Accordingly, they are excepted from various statutory limits based on bank capital, and instead the Comptroller of the Currency is empowered to set appropriate limits.

The FDIC must dispose of the stock of a bridge bank within two years. The FDIC may, after consulting with the Comptroller of the Currency, extend that deadline for up to one year.

The FDIC may assist the sale or merger of a bridge bank in the same way as any other bank. In addition, the FDIC is specifically authorized to provide assistance to a bridge bank or to any company that will acquire control of a bridge bank.

When a bridge bank has taken over a bank that was eligible for an interstate acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the bridge bank remains eligible for an interstate acquisition under the provisions of section 13(f).

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 504—CONVERSIONS TO FSLIC INSURANCE BY FDIC-INSURED SAVINGS BANKS

SECTION 403(e) OF THE NATIONAL HOUSING ACT

The Senate amendment provides that when an FDIC-insured bank converts into an institution that is eligible for FSLIC insurance and applies to the FSLIC for such insurance, the bank's FDIC insurance terminates automatically when the FSLIC insurance begins. The Senate amendment clarifies that FDIC has no authority to review and prohibit such conversions. Under the amendment, however, the FSLIC must notify the FDIC when a bank files an application of that kind, must consult with the FDIC about the application, and must notify the FDIC of the result.

Again, the FHLBB or the FSLIC must notify the FDIC when it receives any applications of that kind, must consult with the FDIC about those applications, and must notify the FDIC of the result.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 505—FEDERAL DEPOSITORY INSTITUTIONS REGULATORY

Agencies Not Subject to Apportionment of Funds Provisions

The Senate amendment exempts the FDIC, FHLBB and FSLIC, Comptroller of the Currency, and NCUA from the apportionment requirements of the Anti-Deficiency Act.

The House bill contains no similar provision. The House recedes to the Senate with an amendment contained in section 506 and which the Senate accepts.

SECTION 506—FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES NOT SUBJECT TO SEQUESTRATION

The agencies mentioned above are exempted from the sequestration requirements of the Balanced Budget and Emergency Deficit Control Act of 1985.

SECTION 507—LIQUIDATION PROCEEDINGS

SECTION 11(J) OF THE FEDERAL DEPOSIT INSURANCE ACT

The Senate amendment requires the FDIC, in its actions in supervising or as receiver of closed banks, to consider possible adverse effects upon the local communities as well as to issue guidelines minimizing such effects upon individual borrowers. Examples of the kinds of actions that could ameliorate adverse community effects include accelerated processing of transactions involving family living or business financing.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 508—CAPITAL POOLS

Acknowledging that the FDIC's authority to aid failing banks allow it to consider both community stability and protecting the insurance fund, it is the sense of the Congress that selling assets only to maximize return or to minimize losses is not in the public interest. In view of the difficulty experienced by communities in raising capital for failing local banks and the authority of the States to establish capital pools to supplement FDIC funds for open bank assistance, the Congress encourages the FDIC to work with States having such capital pools and to use its authority to negotiate the sale of loans to area banks to prevent further asset devaluation.

The House bill contains no similar provision. The House recedes to the Senate.

SECTION 509—EXTENSION OF GARN-ST GERMAIN ACT

The Senate amendment reinstates the provision of the Garn-St Germain Depository Institutions Act of 1982 that expired in 1986, including the extraordinary acquisition authority of that Act, and extends them until March 1990. The House bill extends Titles I and II of the Garn-St Germain Act permanently. The Senate recedes to the House with an amendment, which the House accepts limiting the extension of Title II to no more than five years.

TITLE VI—EXPEDITED FUNDS

The Conferees agreed to an expedited funds availability title which represents a compromise between the Senate title on deposit availability and H.R. 28, the House passed bill on expedited funds availability. This title reflects a consensus between the Senate and the House that the check processing system be improved, at a minimum, to meet the goals and the funds availability schedules in this title.

SECTION 601—SHORT TITLE

The short title of this title is the "Expedited Funds Availability Act."

SECTION 602—DEFINITIONS

Section 602 sets forth definitions relevant to this title. Of particular importance are the definitions of "local originating depository institution" and "check processing region," which, combined, establish the basis for the distinction in the schedules contained in the bill for local and nonlocal checks.

Local Originating Depository Institution

A "local originating depository institution" is defined as "any originating depository institution which is located in the same check processing region as the receiving depository institution."

Check Processing Region

A "check processing region" is defined as "the geographical area served by a Federal Reserve bank processing center or such larger areas as the Board may prescribe by regulations." Of course, a "nonlocal originating depository institution" is defined as any originating depository institution which is not a local depository institution. Thus the definitions that create the distinctions between local and nonlocal checks are based on the existing check processing system.

Furthermore, with regard to the definition of "check processing region," it is the intent of the conferees that this area be no smaller than the existing geographical areas currently being served by a Federal Reserve bank check processing center.

Check

The term "check" is defined as "any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States." Thus the provisions of the bill apply to all depository institutions located in the United States, regardless of ownership.

Noncash Items

The definitions of "check" above excludes "noncash items." An example of a noncash item would be a photocopy of a check with an indemnity agreement. If checks are lost, photocopies may be presented in lieu of the originals. An indemnity agreement may be attached to the photocopy, specifying that the original is lost, that the photocopy should be accepted in lieu of the original, and that all endorsements are guaranteed. The photocopy plus indemnity agreement serves as the replacement for the original check.

Another example would be a document attached to an item, such as sight draft. A sight draft may be used to close an account at one institution and transfer the funds to another institution. A passbook, CD, or

other identification of the account may be attached to the sight draft.

SECTION 603—EXPEDITED FUNDS AVAILABILITY SCHEDULES

Section 603 sets forth the expedited funds availability schedules. Subsection (a), which takes effect on September 1, 1988, requires depository institutions to provide next business day availability for cash deposits and wire transfers; for government checks; for the first $100 of a day's check deposits; for checks deposited in one branch of a depository institution and drawn on the same or another branch of the same institution; and for cashiers' checks, certified checks, tellers' checks and depository checks.

A temporary schedule takes effect September 1, 1988, and remains in effect until the permanent schedule is implemented which is on September 1, 1990. The Federal Reserve may, by regulation, make the permanent schedule or any part of it applicable earlier than September 1, 1990. The temporary schedule requires that there be not more than 2 intervening business days between the day a local check is deposited and the day that such finds are available for withdrawal, and not more than 6 intervening business days for nonlocal checks.

The permanent schedule, which takes effect on or before September 1, 1990, requires that there be not more than 1 intervening business day between the day a local check is deposited and the day such funds are available for withdrawal and not more than 4 intervening business days for nonlocal checks.

Sections 603(b) and 603(c) provide a modification in the schedule for cash withdrawals. The first $100 of any deposit would be available for cash withdrawal on the opening of the next business day after the deposit is made. The next $400 of any deposit would be available for cash withdrawal by no later than 5:00 p.m. on the same business day as other funds are made available—funds made available to pay checks written to third parties. The remainder of any deposit would be available for cash withdrawal no later than the opening of the business day after other funds are made available—again, funds made available to pay checks written to third parties.

For example, in the context of $900 worth of local checks deposited on a Monday under the permanent schedule, $100 in cash of the aggregate amount of such checks would be available at the opening of business on Tuesday, the next business day pursuant to section 603(a). By no later than 5:00 p.m. on Wednesday, an additional $400 of cash would be available. The remaining balance of funds for purposes of cash withdrawal represented by those local checks—$400—would then be available at the opening of business on Thursday.

In addition, a similar modification applies in the schedule for cash availability to the temporary schedule, in the case of check deposits drawn on a local originating depository institution which, although in the same check processing region, is outside of the same check clearinghouse association as the receiving depository institution.

Under both sections 603 (b) and (c), the maximum amount of cash available for withdrawal at 5:00 p.m. on any one business day under the special provisions would be $400.

This title also provides that the Federal Reserve shall shorten any of the time periods in the Act's schedules in Section 603(d)(1). The conferees agreed to a melding of the provisions of the House and Senate versions to require that the Federal Reserve make such reductions to as short a time period as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of check. The title adopts a test tied to depository institutions' ability to reasonably expect to learn of the nonpayment of a significant number of checks under the improved check clearing system. For example, if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly.

There are situations where transportation networks or geographic proximity will permit the Federal Reserve to provide shorter times than the schedules for nonlocal checks would require. For example, shorter times would be possible for checks transported between such nearby territories as New York City and Jericho, Long Island, and for checks transported between banks in cities with Federal Reserve check processing offices, such as banks in Boston and San Francisco. It is expected that the Federal Reserve will use this authority on a continuing basis to reduce hold periods to the shortest times possible given evolving technology and improved processing methods.

The schedules relating to availability of cash withdrawals, at a minimum, must be shortened when there is a reduction in time periods in the other schedules. It is the intent of the conferees that the differential between the availability of cash and other funds be reduced or eliminated as improvements are made in the check clearing system.

Section 603(d)(2) specifically provides for a one day extension of the schedules for any deposit in an account at a depository institution in Alaska, Hawaii, Puerto Rico, or the Virgin Islands for checks drawn on institutions located outside of those states, commonwealths or territories.

Section 603(e) provides for a different time schedule for deposits at nonproprietary automated teller machines (ATM's), by allowing up to 6 intervening business days for all deposits, including cash deposits, at such ATM's from September 1, 1988 until August 31, 1990. This different schedule reflects the fact that nonproprietary ATM's today do not distinguish among check deposits or between check and cash deposits.

At the same time, the conferees believe it is reasonable to expect the owners and operators of such ATMs to develop the necessary technology to make such differentiations within a reasonably short time. Therefore, the bill would require the availability for such deposits to conform with the aforementioned permanent funds availability schedule, namely one day for local checks and four days for nonlocal checks. However, the deposits outlined in section 603(a), such as cash and government checks, are to be treated as local checks under the permanent funds availability schedule and be accorded availability after one intervening business day, rather than next day availability when deposited at nonproprietary ATMs.

These special provisions apply only to nonproprietary ATMs which are defined as all ATMs that are not proprietary ATMs. Proprietary ATMs include those owned or operated by, or operated exclusively for a receiving depository institution, as well as any ATM within, attached to, located at or adjacent to a depository institution.

The conferees intend that ATM's located at or adjacent to a depository institution be treated the same as a manned teller station for the purposes of the availability schedule. The conferees recognize that in some areas, such as shopping centers, there may be a number of ATM's located nearby a depository institution, but not actually "Located at or adjacent to" the depository institution so as to be properly defined as a proprietary ATM. In these situations, the Federal Reserve is given the authority to promulgate regulations to recognize this distinction.

Because nonproprietary ATMs may be located in different states throughout the country, the bill defines local and nonlocal check deposits at such ATMs based upon the location of the ATM, rather than the branch of the depository institution with which the depositor has an account.

This section also requires the Federal Reserve to establish and maintain a dialogue with depository institutions and their suppliers on computer software and hardware available for ATM's. The Federal Reserve must report to the Congress regarding this software and hardware and on the potential for improving the processing of ATM deposits by September 1 of each year in the first three years after enactment.

SECTION 604—SAFEGUARD EXCEPTIONS

Section 604 establishes certain safeguard exceptions from the funds availability schedules. These include an exception for new account holders; for the excess of amounts represented by deposits by check or checks in any one day aggregating over $5,000 and a "reasonable cause" exception if the receiving depository institution has reasonable cause to believe a check is uncollectible.

For new accounts, the general rule is that the schedules do not apply during the first 30 days after an account is opened. However, the title contains several exceptions that provide for speedy availability. Thus, it requires next day availability for cash and funds represented by wire transfers, for cashier's checks, certified checks, teller's checks, depository checks, traveler's checks, and for government checks. Except for cash and wire transfers, there would be a limit of $5,000 for next day availability of the funds represented by the above-mentioned checks, with the proviso that not more than 8 business days intervene before the excess amount over $5,000 shall be available for withdrawal.

Also, in addition to the exceptions discussed above, the title allows the Federal Reserve by regulation to establish reasonable exceptions for checks that have been returned unpaid and redeposited and for repeatedly overdrawn accounts. While the title does not define accounts that have been overdrawn repeatedly, the conferees believe that a reasonable definition would be one that specifies that an account (or a successor account) be overdrawn at least on 3 separate and distinct occasions within any 6 month period. The funds availability schedule would not apply to any such account for a period of six months following the last occasion involved.

Finally, the title also provides exceptions for emergency conditions and to prevent fraud losses.

Section 604(f) establishes procedures for notice to the depositor whenever an exception is invoked, for the contents of such a notice, and where exceptions are invoked for reasonable cause a requirement that de-

pository institutions keep a record of each notice (Section 604(c)(4)). Furthermore, when an exception is invoked, the availability of the funds shall be governed by the policy of the depository institution, but shall not exceed a reasonable time period, as determined by the Board.

SECTION 605—DISCLOSURE OF FUNDS AVAILABILITY POLICIES

Section 605 governs when depository institutions have to disclose their funds availability policies. The title requires disclosure to new account holders, on all preprinted deposit slips, at manned teller stations and at automated teller machines either by posting or by providing a general notice on depository envelopes that funds may not be immediately available for withdrawal. In addition, depository institutions must have their policies available in written form at the depository institutions and, upon request, must send the information to any person who requests it. Existing customers must receive a notice of the institution's specific funds availability policy within 60 days after the temporary schedule goes into effect, on September 1, 1988. Depository institutions using model disclosure forms published by the Federal Reserve shall be deemed in compliance with the disclosure provisions.

For subsequent changes to these policies, depository institutions must send written notice to customers 30 days before implementation, except that changes that expedite funds availability may be disclosed 30 days after implementation.

SECTION 606—PAYMENT OF INTEREST

Section 606 of the title provides that interest shall accrue on interest-bearing accounts not later than the day on which a depository institution receives provisional credit for a deposit, with the following special rule for credit unions.

If a credit union begins computation of interest or of dividends at a later date than the time when it receives provisional credit with respect to all funds, including cash, into an account, and provided that adequate notice of this interest payment policy is provided under the disclosure provisions, then it would be exempted from the requirements of interest accruing from the day of provisional credit. It is also intended that meaningful disclosure to depositors of such a "payment of interest procedure" occur, by requiring a written description of the time at which such a credit union starts to compute interest or dividends on deposits to such accounts to new customers, and to existing customers in the first mailing after enactment.

The conferees wish to stress that the exemption for computing interest from the day of provisional credit on check deposits is intended only to accommodate the unique operating procedures of credit unions whose traditional accounting practices have often included partial dividends on funds not on deposit for an entire dividend period. Any such practices regarding check deposits may be continued by credit unions under this title provided that cash deposits continue to receive identical treatment. However, it is not intended that individual credit unions change existing practices in order to avoid compliance.

This special rule applies only to credit unions, and is not to be used to otherwise evade compliance with the requirement of interest accruing when a depository institution receives provisional credit.

SECTION 607—MISCELLANEOUS PROVISIONS

Section 607 specifies that deposits made after hours shall be deemed to have been made on the next business day, and that, generally, funds shall be available on the start of any specified business day, except as outlined under Section 603(b) (the permanent schedule) or under Section 603(c) (the temporary schedule).

SECTION 608—EFFECT ON STATE LAW

Section 608 addresses the relationship between the provisions of the title and state laws. It provides that those states with shorter funds availability statutes or regulations in effect before September 1, 1989, shall supercede the provisions of this title and any regulations of the Federal Reserve to the extent such provisions relate to the time by which deposits shall be available for withdrawal. The purpose of this section is to assure that the shortest time schedule in effect—be it as a result of the Federal legislation or the State law—apply, so long as the State law is enacted by September 1, 1989 and remains in effect thereafter.

Except as provided above, the provisions of this title and the Federal Reserve's regulations supercede any provisions of state laws which are inconsistent with this title or such regulations.

SECTION 609—REGULATIONS AND REPORTS BY FEDERAL RESERVE

Section 609 requires the Federal Reserve to prescribe regulations to carry out the provisions of this title. Such authority begins upon the date of enactment and continues even beyond the time of implementation of the final schedules if the Federal Reserve chooses to make further improvements in the check collection system.

The section also contains a noninclusive list of options for the Federal Reserve to use to improve the check processing system. The list consists of options presented during the House and Senate Committee hearings.

In addition, the section requires the Federal Reserve to report to the Congress on the implementation of the funds availability schedules not more than 18 months after enactment. Such reports are also due 2½ years after enactment, and then again 4 years after enactment to monitor both progress in implementation and the impact of the legislation. Further the title requires the GAO to evaluate the Federal Reserve's effort to implement this title in a report due 6 months after the implementation of the final schedule. A Federal Reserve study of the electronic clearing house process is also required.

SECTION 610—ADMINISTRATIVE ENFORCEMENT

This section requires the Federal banking regulators to use existing administrative enforcement mechanisms to enforce compliance with this title. It also authorizes the Federal Reserve to prevent Federally insured institutions from doing business with payment system participants not in compliance with the title or its implementing regulations and not regulated by one of the Federal banking agencies.

SECTION 611—CIVIL LIABILITY

The title includes civil liability provisions in section 611 with statutory damages in individual actions limited to additional amounts as the court may allow but not less than $100 nor more than $1,000. In a class action there shall be no minimum recovery for individuals but total recovery shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved.

Subsection (f) of section 611 authorizes the Federal Reserve to establish liability among depository institutions for violation of the regulations or failure to meet the standards imposed by the regulations promulgated under section 609. It permits the Federal Reserve to allocate the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks.

For example, under this subsection, the Federal Reserve may allocate or impose liability on depository institutions for risks of losses incurred by other depository institutions, their accountholders, or other owners or holders of a check due to a depository institution's failure to handle the check in accordance with regulations imposed under section 609.

This subsection does not limit causes of action brought by accountholders or the amount of damages recoverable by accountholders under any other action.

SECTION 612—PARITY IN CLEARING

Section 612 of the title would add new subsection (e) to 11A of the Federal Reserve Act, 12 U.S.C. 248a, providing that all depository institutions may receive for deposit and as deposits any evidences of transaction accounts (e.g., checks, NOW drafts, share drafts, and similar instruments) from other depository institutions or from any office of any Federal Reserve Bank without regard to federal or state branching restrictions.

Federal and state branching restrictions can impede private sector correspondent banks from competing with the Federal Reserve for check clearing business, because such restrictions limit the number of locations from which a correspondent can receive from its customers checks and other cash items that the customers want collected. For example, a relay point where a courier accepts checks from customers for forwarding to the correspondent for processing would, under some interpretations, be viewed as a branch of the correspondent. The Federal Reserve System, on the other hand, has a nationwide presence and is not subject to such restrictions.

The parity in clearing provision which was part of the Senate Bill would clarify the law by stating that federal and state branching restrictions do not apply to depository institutions that are collecting checks and similar instruments for depository institutions. Thus, correspondents could operate relay points nationwide without fear of violating federal or state branching restrictions. This proposal would remove this perceived competitive advantage of the Federal Reserve.

This section, however, is not intended to be used to circumvent or evade federal and state branching restrictions, and is only meant to accomplish the purposes outlined above.

SECTION 613—EFFECTIVE DATES

This section specifies that sections 603 (the expedited funds availability schedules), 604 (safeguard exceptions), 605 (disclosure), 606 (payment of interest), 610 (administrative enforcement), and 611 (civil liability) of this title shall take effect on September 1, 1988. Except as provided above, this title is effective upon date of enactment.

TITLE VII—CREDIT UNION AMENDMENTS

The Senate amendment contains a variety of provisions to streamline and assist in the operations and regulation of credit unions.

The House recedes to the Senate with an amendment which the Senate accepts. The House amendment contains the Senate provision in section 701-715 and an amendment contained in 716. The provisions are as follows:

SECTION 701—SHORT TITLE

The Senate amendment sets forth the short title of this title as the "Credit Union Amendments of 1987."

SECTION 702—SECOND MORTGAGE AND HOME IMPROVEMENT LOANS

The Senate amendment is intended to help consumer/members with a dilemma sometimes occurring at the term completion of an adjustable-rate second mortgage or home improvement loan. Because of market interest rate fluctuations near the end of the loan, members are currently confronted with either a balloon payment or higher monthly payments in order to pay off the loan by the end of the current 15-year term. This section authorizes the NCUA to extend the term of such loans to permit more level loan payouts.

SECTION 703—OWNERSHIP INTEREST

The Senate amendment clarifies that funds in shares, share certificates, and share draft accounts constitute a member's ownership interest in the credit union.

SECTION 704—FAITHFUL PERFORMANCE

The Senate amendment eliminates the existing requirement that Federal credit unions obtain "faithful performance" coverage for financial officers. Basic fidelity coverages (e.g., fraud, dishonesty, embezzlement) continues to be required for all officials and employees.

SECTION 705—MEMBERSHIP OFFICERS

The Senate amendment provides that membership officers may be selected from the credit union's membership, rather than having only members of the board of directors eligible to be membership officers.

SECTION 706—NONPARTICIPATION

The Senate amendment contains a technical amendment to clarify that paragraphs (a) and (b) of Section 118 of the Federal Credit Union Act are alternative methods of expelling a member of a credit union. There has been confusion as to whether (a) and (b) were alternatives or linked. A credit union may either adopt its own policy for expulsion, as set forth in paragraph (b), or it may simply expel a member under paragraph (a).

SECTION 707—PROPERTY ACQUISITION FLEXIBILITY

The Senate amendment provides the NCUA Board with needed flexibility to obtain office space and equipment so as to respond more precisely to the nature and location of the agency's needs at substantial cost savings.

SECTION 708—TREATMENT OF NCUAB FUNDS

The Senate amendment clarifies the status of the NCUA's funds, thus negating the transfer of any such funds to OMB. This section would be effective for fiscal year 1986 and each fiscal year thereafter.

SECTION 709—TECHNICAL AND CLARIFYING AMENDMENTS; REMOVAL AND PROHIBITION AUTHORITY

The Senate amendment clarifies that the NCUA's prohibition authority extends to both employees and agents of federally insured credit unions, and conforms the NCUA's jurisdiction in prohibition actions to its jurisdiction in cease-and-desist actions.

SECTION 710—EFFECT OF REMOVAL OR SUSPENSION

The Senate amendment provides that if a person is removed, suspended or prohibited from participating in the conduct of the affairs of an insured credit union, he is also removed, suspended, or prohibited from all federally insured depository institutions, all bank holding companies, and all institutions chartered by the Farm Credit Administration. This would eliminate the need for the Federal Reserve Board, OCC, FDIC, or FSLIC to take separate enforcement actions against a person removed from a federally insured credit union.

SECTION 711—IMPOSITION OF CONSERVATORSHIP

The Senate amendment allows the NCUA to impose conservatorship: when there is a willful violation of a cease-and-desist order which has become final; and, when there is a concealment of or refusal to submit documents or other records of a credit union to an NCUA examiner or other lawful agent of the NCUA Board.

SECTION 712—REDUCTION IN STATE COMMENT WAITING PERIOD

The Senate amendment reduces from 90 days to 30 days the period the NCUA must allow State regulators to respond to the NCUA's proposed imposition of conservatorship in the case of a State-chartered, NCUA-insured credit union. Events today often compel quicker and more decisive action by regulators such as the NCUA than the 90-day consultation period allows.

SECTION 713—AUTHORITY AS CONSERVATOR

The Senate amendment declares that the NCUA, in exercising its conservatorship authority, has all the power of the credit union members, directors, officers, and committees.

SECTION 714—LIQUIDATION PROCEEDINGS

The Senate amendment clarifies the Board's authority to act ex parte without notice when a credit union is determined to be insolvent or bankrupt. As in Section 206 of the Federal Credit Union Act, the credit union can challenge the action within 10 days at a show-cause hearing in district court. At such a hearing the Board would be required to establish that the statutory grounds for liquidation (e.g., bankruptcy or insolvency) were present when it acted.

SECTION 715—TRANSFER OF FTC JURISDICTION TO NCUA

The Senate amendment permits Federal credit unions the same exemptions from the Federal Trade Commission's enforcement and investigative authority as is currently allowed banks and savings and loan associations. Thus, the FTC is no longer able, under the Federal Trade Commission Act, to declare practices of Federal credit unions unfair trade practices, or to investigate such practices of Federal credit unions. Such authority is transferred to the NCUA.

SECTION 716—ASSETS WHICH MAY BE PLEDGED

The House recedes to the Senate with an amendment to this section which the Senate accepts. The House amendment permits credit unions to pledge any of their assets to secure the deposits specified in section 207(c) of Federal Credit Union Act, including federal, state, and local government entities, Indian tribes, and political subdivisions.

TITLE VIII—LOAN LOSS AMORTIZATION FOR AGRICULTURAL BANKS

SECTION 801—LOAN LOSS AMORTIZATION FOR AGRICULTURAL BANKS

The Senate amendment permits agricultural banks to write down their loan losses over ten years rather than to deduct the amount of loss from capital as soon as the loss is recognized. Appropriate Federal bank regulating agencies may permit any agricultural banks that they supervise to amortize any loss on any qualified agricultural loan for any year between December 31, 1983, and January 1, 1992, over as much as a ten-year period, provided the agency finds no evidence of fraud or criminal abuse on the part of the bank leading to the loss. Under the same condition, the bank supervisory agencies may permit any agricultural bank to reappraise the real estate or other property acquired coincident to the making of a qualified agricultural loan, that it owned on January 1, 1983, and any such additional property acquired before January 1, 1992. Any loss in connection therewith may be amortized over as much as a ten-year period.

Agricultural Banks

The Senate amendment defines "agricultural banks" as those whose deposits are insured by FDIC, that are located in an agricultural area, the economy of which is dependent upon agriculture, that have $100,000,000 or less in assets; and that have at least 25% of their total loans in qualified agricultural loans.

Qualified Agricultural Loan

"Qualified agricultural loan" is defined as a loan made to finance production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or any other category of loans as the appropriate Federal banking agency deems eligible.

In order to be eligible for the extended loan loss provision, a bank must maintain at least as great a percentage of agricultural loans in its portfolio as it had in its portfolio on January 1, 1986. The appropriate bank supervisory agency may waive the requirement that at least 25 percent of loans be agricultural loans. The appropriate bank supervisory agencies are to issue implementing regulations.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment reduces the loan loss amortization period from 10 years to 7 years. In addition, the amendment to the Senate amendment requires that as a condition of eligibility of the extended loan loss amortization period, the institution have a plan approved by the appropriate Federal banking agency to restore the institution's capital within the seven-year amortization period. The appropriate federal banking agencies must publish, within 90 days of the date of enactment, regulations regarding the restoration of capital.

TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED FINANCIAL DEPOSITORY INSTITUTIONS

SECTION 901—CONGRESSIONAL FINDINGS

This section declares that Congress finds that since the 1930's the American people have relied upon Federal deposit insurance to insure safety and security of their funds in federally insured depository institutions and the security of such funds is an essen-

tial element of the American financial system.

SECTION 902—REAFFIRMATION OF FULL FAITH AND CREDIT BACKING OF FEDERALLY INSURED FUNDS

This section declares it the sense of Congress to reaffirm that deposits up to the statutorily prescribed amount, in federally insured depository institutions are backed by the full faith and credit of the United States.

The House bill and Senate amendment were virtually identical. The Senate recedes to the House.

TITLE X—PAYMENT OF GOVERNMENT CHECKS

The Senate amendment requires any depository institution that cashes checks for customers to cash checks issued by the United States Government, any State, any unit of local government, or any agency thereof, provided the individual who issued the check is registered with the depository institution. The Senate amendment establishes enforcement authority in federal banking regulatory agencies and provides for civil liability for actual damages, punitive damages, and attorney's fees for failure to comply with requirements of this section.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment requires the General Accounting Office to study and report back to the Banking Committees within six months on the extent to which individuals who receive Treasury checks have difficulty cashing such checks. It is anticipated that this study will assist the Committees in judging whether legislation may be needed to mandate that depository institutions and others cash government checks.

The House amendment also establishes a system to promote the orderly payment of Treasury checks by (1) placing a one-year limit on the negotiability of a Treasury check and (2) reducing from six years to one year the time the federal government has to recover from a depository institution the amount of a Treasury check paid over a forged endorsement.

Although a Treasury check will be canceled if not cashed within 12 months of issuance, the conferees stress that nothing in this title affects either the underlying obligation of the Government to make a payment to any person or the entitlement of any person to the issuance of a replacement check for a check that has been lost, stolen, or canceled.

TITLE XI—PAYMENT OF INTEREST REQUIRED

The Conference reported bill requires the Federal Deposit Insurance Corporation to pay interest on the so-called "yellow certificates" issued by the former Golden Pacific National Bank of New York, New York before the bank was declared insolvent on June 21, 1985. Such certificates must have been determined to be deposits, as defined in the Federal Deposit Insurance Act, pursuant to any judicial action or agency proceeding.

The interest is to be paid at the statutory rate of interest in effect under the law of the State of New York. Currently, this rate of interest is 9 percent, pursuant to NY Civ. Prac. Law Section 5004 (McKinney Supp. 1987), which sets forth the statutory rate of interest to be paid on a cause of action from accrual until verdict.

TITLE XII—HIGH YIELD BOND STUDY

SECTION 1201—HIGH YIELD BOND STUDY

The Senate amendment requires the Comptroller General, by July 1, 1987, to make a comparative study between the issuance of and investment in high yield noninvestment grade bonds and other types of investments made by federally insured institutions during the 5-year period prior to this legislation. The Comptroller General is to coordinate and consult with the Securities Exchange Commission, the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Savings and Loan Insurance Corporation, the FDIC, the Secretary of the Treasury, and the Secretary of Labor.

The study is to include the identity and a nationally recognized bond rating house rating of the issuer, identity of major purchasers of the bonds, percentage of total amount of issued as a method of financing corporate takeovers, identity of purchasers investing in such bonds issued as a method of financing corporate takeovers, other purposes for which such bonds are issued, a summary and analysis of current laws regulating investment in such bonds, and a review of the impact of issuance of such bonds on corporate debt as it relates to federal monetary policy.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment requires the Comptroller General to also examine all other types of direct investments made by federally-insured institutions and the effect these investments have had on the federal deposit insurance funds. In addition, the House amendment requires that the study be submitted to Congress within six months after date of enactment.

For purposes of the study, the phrase "other types of investments made by federally insured institutions" includes, but is not limited to, commercial and industrial loans; loans secured by real estate; credit card activities; investment grade debt securities; consumer loans; federal debt securities; mortgage-backed securities; direct investments; and single family home mortgages. In analyzing each type of investment, the Comptroller General should:

(1) Compare the various forms of risk, including default, interest rate, liquidity, and others, of each type of investment, both for S&Ls and other financial institutions;

(2) Determine and compare the profitability, both in terms of yield and return, of a typical portfolio of each type of investment;

(3) Determine the total dollar amount of each type of investment held by insured institutions and percentage of total assets each such category of investment represents;

(4) Determine and rank by type the investments that have resulted in or pose the greatest threat in the future for the most insolvencies leading to the closing of an insured institution or the placing of such an institution in receivership; and

(5) Include such other data as the committees of jurisdiction and the Comptroller General may require prior to the conclusion of the study.

SECTION 1202—STUDY OF COMPETITIVE ISSUES IN THE PAYMENTS MECHANISM

The Senate amendment clarified that nothing in section 13 of the Federal Reserve Act should be interpreted to prohibit or exempt the Federal Reserve Board or any Federal Reserve bank from paying fees on a nondiscriminatory basis to privately operated payments providers.

The House bill contains no similar provision. The House recedes to the Senate with an amendment which the Senate accepts.

The House amendment directs the Comptroller General to conduct, in coordination and consultation with the Federal Reserve, a study of the Federal Reserve's exemption from the imposition of presentment fees, the impact of the imposition of such fes on the efficiency of the check collection system, whether the Federal Reserve requires check clearinghouses to provide services to Federal Reserve banks, and whether Federal Reserve banks should pay check clearing houses for such services. The Comptroller General must submit this report to Congress no later than six months after the date of enactment.

SECTION 1203—STUDY AND REPORTS CONCERNING DIRECT INVESTMENTS

The House bill requires the Bank Board to conduct a study of the effect of direct investment activities on insured institutions and report, not later than 18 months after the date of enactment, to the House and Senate Banking Committees on the findings and conclusions with respect to the study. Also, the Bank Board shall submit to the House and Senate Banking Committees, not less than 90 days before final approval, a report describing any repeals or modifications of regulations pertaining to direct investment activities, including the effect of such proposed changes on the insurance fund.

The Senate amendment contains no similar provision. The Senate recedes to the House.

SECTION 1204—ADJUSTABLE RATE MORTGAGE

The Senate amendment requires that adjustable rate mortgages include a limitation on the maximum rate of interest applicable to the loan. It applies only to loans secured by a lien on a one-to-four-family dwelling unit made by persons who regularly extend credit for personal, family, or household purposes. A family dwelling unit may be a condominium or cooperative housing unit or a mobile home.

Definition—Adjustable Rate Mortgage

"Adjustable rate mortgage" is defined as a loan pursuant to an agreement under which the creditor may periodically adjust the rate of interest.

Rulemaking authority is delegated to the Federal Reserve Board. Violations are to be enforced by the primary regulators of each type of financial institution and by the Federal Trade Commisison. Each of the agencies may use any of its administrative enforcement powers to enforce this legislation and may, under the authority of the Truth in Lending Act, adjust finance charges where erroneously disclosed. Creditors failing to comply with the provisions of this legislation may be held civilly liable to individuals for actual damages and, to classes, for up to $500,000, under the enforcement provisions of the Truth in Lending Act.

The House bill contains no similar provision. The House recedes to the Senate.

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As additional conferees only for consideration of title I of the House bill and title III of the Senate amendment:

STEVE NEAL,
STEVE BARTLETT,
Managers on the Part of the House.

BILL PROXMIRE,
ALAN CRANSTON,
DON RIEGLE,
PAUL SARBANES,
CHRISTOPHER J. DODD,
ALAN J. DIXON,
JAKE GARN,
JOHN HEINZ,
ALFONSE D'AMATO,
PHIL GRAMM,
Managers on the Part of the Senate.