119TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
119–90

PROMOTING NEW BANK FORMATION ACT

MAY 6, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HILL of Arkansas, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 478]

The Committee on Financial Services, to whom was referred the bill (H.R. 478) to require the appropriate Federal banking agencies to establish a 3-year phase-in period for de novo financial institutions to comply with Federal capital standards, to provide relief for de novo rural community banks, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Promoting New Bank Formation Act".

SEC. 2. PHASE-IN OF CAPITAL STANDARDS.

The Federal banking agencies shall issue rules that provide for a 3-year phase-in period for a depository institution or depository institution holding company to meet any Federal capital requirements that would otherwise be applicable to the depository institution or depository institution holding company, beginning on—

(1) the date on which the depository institution became an insured depository institution; or

(2) in the case of a depository institution holding company, the date on which the depository institution subsidiary of the depository institution holding company became an insured depository institution.

SEC. 3. CHANGES TO BUSINESS PLANS.

(a) IN GENERAL.—During the 3-year period beginning on the date on which a depository institution became an insured depository institution, the insured depository institution or its depository institution holding company may request to deviate from a business plan that has been approved by the appropriate Federal banking agency by submitting a request to such agency pursuant to this section.

(b) REVIEW OF CHANGES.—The appropriate Federal banking agency shall, not later than the end of the 30-day period beginning on the receipt of a request under subsection (a)—

(1) approve, conditionally approve, or deny such request; and

(2) notify the applicant of such decision and, if the agency denies the request—

(A) provide the applicant with the reason for such denial; and

(B) suggest changes to the request that, if adopted, would allow the agency to approve such request.

(c) RESULT OF FAILURE TO ACT.—If an appropriate Federal banking agency fails to approve or deny a request within the 30-day period required under subsection (b), such request shall be deemed to be approved.

SEC. 4. RURAL COMMUNITY DEPOSITORY INSTITUTION LEVERAGE RATIO.

(a) IN GENERAL.—During the 3-year period beginning on the date on which a rural depository institution became an insured depository institution, the Community Bank Leverage Ratio for the rural community bank shall be 8 percent.

(b) PHASE-IN AUTHORITY.—The Federal banking agencies shall issue rules to phase-in the Community Bank Leverage Ratio described under subsection (a) with respect to a rural depository institution by setting lower Community Bank Leverage Ratio percentages during the first 2 years of the 3-year period described under subsection (a).

(c) DEFINITIONS.—In this section:

(1) COMMUNITY BANK LEVERAGE RATIO.—The term "Community Bank Leverage Ratio" has the meaning given that term under section 201(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (12 U.S.C. 5371 note).

(2) RURAL DEPOSITORY INSTITUTION.—The term "rural depository institution" means a depository institution—

(A) with total consolidated assets of less than $10,000,000,000; and

(B) located in a rural area, as defined under section 1026.35(b)(iv)(A) of title 12, Code of Federal Regulations.

SEC. 5. AGRICULTURAL LOAN AUTHORITY FOR FEDERAL SAVINGS ASSOCIATIONS.

Section 5(c) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended—

(1) in paragraph (1), by adding at the end the following:

"(V) AGRICULTURAL LOANS.—Secured or unsecured loans for agricultural purposes."; and

(2) in paragraph (2)(A), by striking "business, or agricultural" and inserting "or business".

SEC. 6. STUDY ON DE NOVO INSURED DEPOSITORY INSTITUTIONS.

(a) STUDY.—The Federal banking agencies shall, jointly, carry out a study on—

(1) the principal causes for the low number of de novo insured depository institutions in the 10-year period ending on the date of enactment of this Act; and

(2) ways to promote more de novo insured depository institutions in areas currently underserved by insured depository institutions.

(b) REPORT TO CONGRESS.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Federal banking agencies shall, jointly,

issue a report to Congress containing all findings and determinations made in carrying out the study required under subsection (a).

SEC. 7. DEFINITIONS.

In this Act, the terms "appropriate Federal banking agency", "depository institution", "depository institution holding company", "Federal banking agency", and "insured depository institution" have the meaning given those terms, respectively, under section 3 of the Federal Deposit Insurance Act.

PURPOSE AND SUMMARY

Introduced on January 16, 2025, by Representative Barr, H.R. 478, the *Promoting New Bank Formation Act*, would provide for a 3-year phase-in period for de novo financial institutions to meet federal capital requirements; would lower the Community Bank Leverage Ratio (CBLR) for rural community banks to 8 percent from 8.5 percent during the first three years of operation; would require the Federal Banking Agencies to set rules further reducing the CBLR for the initial two years of operation to allow for a phase-in period; would remove certain restrictions to allow federal savings associations to deal in agricultural loans; and would require the Federal banking agencies to conduct a joint study on trends in de novo financial institutions.

BACKGROUND AND NEED FOR LEGISLATION

The banking industry faces increasing challenges due to regulatory and compliance burdens, particularly in the formation of new banks, or de novo banks. According to the Federal Deposit Insurance Corporation (FDIC), only 60 new banks have been chartered in the last decade, a sharp decline from over 2,000 new banks formed between 1990 and 2008. This shortage of new community banks exacerbates the issues caused by the consolidation and closure of financial institutions in recent years. By incentivizing de novo bank formation, H.R. 478 seeks to address the gap in community banking services, fostering greater competition and improving access to financial services for families, small businesses, and local communities.

COMMITTEE CONSIDERATION

118TH CONGRESS

On February 2, 2023, Representative Andy Barr (R–KY) introduced H.R. 758, the *Promoting Access to Capital in Underbanked Communities Act of 2023*, with Representatives Pete Sessions (R–TX), Barry Loudermilk (R–GA), Byron Donalds (R–FL), Blaine Luetkemeyer (R–MO), Young Kim (R–CA), Brian Fitzpatrick (R–PA), David Kustoff (R–TN), Michael Guest (R–MS), William Timmons (R–SC), David Valadao (R–CA), John Rose (R–TN), Roger Williams (R–TX), Guy Reschenthaler (R–PA), Mike Ezell (R–MS), Bill Posey (R–FL), Monica De La Cruz (R–TX), and Erin Houchin (R–IN) subsequently added as cosponsors. The bill was referred solely to the Committee on Financial Services.

On February 8, 2023, the Subcommittee on Financial Institutions held a hearing entitled, "Revamping and Revitalizing Banking in the 21st Century." The introduced version of the bill was considered in the hearing. The witnesses were: Jim Reuter, Chief Executive Officer, FirstBank, on behalf of the American Bankers Associa-

tion; Penny Lee, Chief Executive Officer, Financial Technology Association; John Berlau, Senior Fellow and Director of Finance Policy, Competitive Enterprise Institute; Brian Knight, Senior Research Fellow, Director of Innovation and Governance, Mercatus Center at George Mason University; and Renita Marcellin, Advocacy and Legislative Director, Americans for Financial Reform.

On May 16, 2024, the Committee on Financial Services met in open session and ordered H.R. 758, as amended, to be reported favorably to the House by a recorded vote of 24 yeas and 22 nays, a quorum being present. (Record Vote No. FC–142). Before the question to report was called, the Committee adopted an amendment in the nature of a substitute offered by Representative Barr by a voice vote. H. Rept. 118–786 was filed on December 3, 2024.

119TH CONGRESS

On January 16, 2025, Representative Barr introduced H.R. 478, the *Promoting New Bank Formation Act*. Representatives Dan Meuser (R–PA), Troy Downing (R–MT), Loudermilk, De La Cruz, Ben Cline (R–VA), Jake Ellzey (R–TX), Scott Franklin (R–FL), Bill Huizenga (R–MI), Brad Knott (R–NC), Timmons, Neal Dunn (R–FL), Williams, Mike Flood (R–NE), Gary Palmer (R–AL), Donalds, John Rose (R–TN), Addison McDowell (R–NC), Mark Alford (R–MO), Derek Schmidt (R–KS), Scott Fitzgerald (R–WI), Jefferson Shreve (R–IN), Tim Moore (R–NC), Mike Lawler (R–NY), and Sessions were added subsequently as cosponsors. The bill was referred solely to the Committee on Financial Services.

RELATED HEARINGS

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearing was used to develop H.R. 478:

The Full Committee held a hearing on February 5, 2025, titled "Make Community Banking Great Again." H.R. 478 was considered in this hearing. The following witnesses testified: Cathy Owen, Executive Chairman, Eagle Bank & Trust Company, Little Rock, AR; Susannah Marshall, Bank Commissioner, Arkansas State Bank Department, Little Rock, AR; Rebeca Romero Rainey, President & CEO, Independent Community Bankers of America, Washington, D.C.; Patrick J. Kennedy Jr., Founding Partner, Kennedy Sutherland, LLP, San Antonio, TX; Mitria Spotser, Vice President, Federal Policy, Center for Responsible Lending, Washington, D.C.

The Committee on Financial Services met in open session on April 2, 2025, to consider, among others, H.R. 478.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

On April 2, 2025, the Committee ordered H.R. 478, as amended, to be reported favorably to the House by a recorded vote of 28 yeas and 21 nays, a quorum being present. (Record Vote No. FC–063).

The Committee considered the following amendments to H.R. 478:

- Representative Barr offered an amendment in the nature of a substitute, which made minor edits and technical changes. The amendment was adopted by a voice vote.
- Ranking Member Maxine Waters (D–CA) offered an amendment (No. 38) that would have replaced the text of H.R. 478, which provides for a 3-year phase-in period for de novo financial institutions to meet federal capital requirements; lowers the Community Bank Leverage Ratio (CBLR) for rural community banks to 8 percent from 8.5 percent during the first three years of operation; requires the Federal banking agencies to set rules further reducing the CBLR lower for the initial two years of operation to allow for a phase-in period; and removes some restrictions to allow federal savings associations to deal in agricultural loans, and instead would require the Federal banking agencies to conduct a joint study on challenges to de novo financial institutions, including minority depository institutions, and submit to Congress a strategic plan. The amendment was defeated by a voice vote.

Committee on Financial Services

Markup 2
April 2, 2025

Bill **H.R. 478**
Motion **to report favorably**
Measure **H.R. 478 (as amended)**

Record Vote No.
FC-063

Disposition **AGREED TO (28-21)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill	X			Ranking Member Waters		X	
Mr. Lucas	X			Ms. Velázquez		X	
Mr. Sessions	X			Mr. Sherman		X	
Mr. Huizenga	X			Mr. Meeks		X	
Mrs. Wagner	X			Mr. Scott		X	
Mr. Barr	X			Mr. Lynch	X		
Mr. Williams (TX)	X			Mr. Green (TX)		X	
Mr. Emmer	X			Mr. Cleaver			X
Mr. Loudermilk	X			Mr. Himes		X	
Mr. Davidson	X			Mr. Foster		X	
Mr. Rose	X			Mrs. Beatty		X	
Mr. Steil	X			Mr. Vargas		X	
Mr. Timmons	X			Mr. Gottheimer		X	
Mr. Stutzman	X			Mr. Gonzalez		X	
Mr. Norman			X	Mr. Casten		X	
Mr. Meuser	X			Ms. Pressley		X	
Mrs. Kim	X			Ms. Tlaib		X	
Mr. Donalds			X	Mr. Torres (NY)		X	
Mr. Garbarino	X			Ms. Garcia (TX)		X	
Mr. Fitzgerald	X			Ms. Williams of GA		X	
Mr. Flood	X			Ms. Pettersen			X
Mr. Lawler	X			Mr. Fields		X	
Ms. De La Cruz	X			Ms. Bynum		X	
Mr. Ogles			X	Mr. Liccardo		X	
Mr. Nunn	X						
Mrs. McClain	X						
Ms. Salazar	X						
Mr. Downing	X						
Mr. Haridopolos	X						
Mr. Moore (NC)	X						
	27	**0**	**3**		**1**	**21**	**2**

Committee Totals:

28	**21**	**5**
Yeas	Nays	Not Voting

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 478 is to incentivize de novo bank formation to address the gap in community banking services; foster greater competition; and improve access to financial services for families, small businesses, and local communities.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 478. The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

UNFUNDED MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the *Unfunded Mandates Reform Act*. The Committee will adopt the estimate once it has been prepared by the Director.

EARMARK STATEMENT

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the resolution and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

FEDERAL ADVISORY COMMITTEE ACT STATEMENT

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act*.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title is the "Promoting New Bank Formation Act."

Section 2. Phase-in of capital standards

Section 2 requires the Federal Banking Agencies to issue rules that provide for a 3-year phase-in period for a depository institution or depository institution holding company to meet any Federal capital requirements.

Section 3. Changes to business plans

Section 3 provides that an insured depository institution or its depository institution holding company may request to deviate from a business plan that has been approved by the appropriate Federal Banking Agency during the 3-year period beginning when it became an insured depository institution. The appropriate Federal banking agency would then have 30 days to approve or deny the request for a change in business plans.

Section 4. Rural Community Depository Institution Leverage Ratio

Section 4 provides that the Community Bank Leverage Ratio for a rural community bank during the 3-year period beginning on the date on which the rural community bank became an insured depository institution shall be 8 percent.

Section 5. Agricultural loan authority for Federal savings associations

Section 5 amends the Home Owners' Loan Act to include agricultural loans as a permissible loan type.

Section 6. Study on De novo insured depository institutions

Section 6 requires the Federal Banking Agencies to study the principal causes of the low number of de novo insured depository institutions in the last ten years and report the study to Congress.

Section 7. Definitions

Section 7 defines terms in the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HOME OWNERS' LOAN ACT

* * * * * * *

SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe—

(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

(2) to issue charters therefor,

giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

(b) DEPOSITS AND RELATED POWERS.—

(1) DEPOSIT ACCOUNTS.—

(A) Subject to the terms of its charter and regulations of the Comptroller of the Currency, a Federal savings association may—

(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as "accounts"); and

(ii) issue passbooks, certificates, or other evidence of accounts.

(B) A Federal savings association may not permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Comptroller of the Currency, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Comptroller of the Currency so provide.

(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association,

where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Comptroller of the Currency. Except as authorized in writing by the Comptroller of the Currency, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Comptroller of the Currency may by regulation provide.

(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Comptroller of the Currency.

(2) OTHER LIABILITIES.—To such extent as the Comptroller of the Currency may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Comptroller of the Currency and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

(3) LOANS FROM STATE HOUSING FINANCE AGENCIES.—

(A) IN GENERAL.—Subject to regulation by the Comptroller of the Currency but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency.

(B) INTEREST RATE.—A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than 1¾ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

(4) MUTUAL CAPITAL CERTIFICATES.—In accordance with regulations issued by the Comptroller of the Currency, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) to the extent permitted by the Comptroller of the Currency. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this Act or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

(C) are entitled to the payment of dividends; and

(D) may have a fixed or variable dividend rate.

(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Comptroller, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

(G) DEPOSITS.—Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

(H) STATE SECURITIES.—Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code.

(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans insured under section 240 of the National Housing Act.

(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to—

(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

(ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

(M) LIQUIDITY INVESTMENTS.—Investments (other than equity investments), identified by the Comptroller, for liquidity purposes, including cash, funds on deposit at a Federal reserve bank or a Federal home loan bank, or bankers' acceptances.

(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

(O) CERTAIN HUD INSURED OR GUARANTEED INVESTMENTS.—Loans that are secured by mortgages—

(i) insured under title X of the National Housing Act, or

(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970, or under section 802 of the Housing and Community Development Act of 1974.

(P) STATE HOUSING CORPORATION INVESTMENTS.—Obligations of and loans to any State housing corporation, if—

(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, and

(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and

(ii) the portfolio of which is restricted by such management company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

(R) MORTGAGE-BACKED SECURITIES.—Investments in securities that—

(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934),

subject to such regulations as the Comptroller may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

(S) SMALL BUSINESS RELATED SECURITIES.—Investments in small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Comptroller may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

(T) CREDIT CARD LOANS.—Loans made through credit cards or credit card accounts.

(U) EDUCATIONAL LOANS.—Loans made for the payment of educational expenses.

(V) AGRICULTURAL LOANS.—Secured or unsecured loans for agricultural purposes.

(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, **[**business, or agricultural**]** *or business* purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Comptroller.

(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t).

(ii) EXCEPTION.—The Comptroller may permit a savings association to exceed the limitation set forth in clause (i) if the Comptroller determines that the increased authority—

(I) poses no significant risk to the safe and sound operation of the association, and

(II) is consistent with prudent operating practices.

(iii) MONITORING.—If the Comptroller permits any increased authority pursuant to clause (ii), the Comptroller shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

(C) INVESTMENTS IN PERSONAL PROPERTY.—Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Comptroller. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

(B) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

(C) CONSTRUCTION LOANS WITHOUT SECURITY.—Loans—

(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

(ii) with respect to which the association—

(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or $250,000, whichever is less.

(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business

Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

(E) BANKERS' BANKS.—A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 5136 of the Revised Statutes or in section 5169(b) of the Revised Statutes, on the same terms and conditions as a national bank may purchase such shares.

(F) NEW MARKETS VENTURE CAPITAL COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, except that a Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 5 percent of the capital and surplus of such savings association.

(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

(A) IN GENERAL.—If, under section 5(d)(3) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank, the appropriate Federal banking agency may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

(B) EXTENSION.—The appropriate Federal banking agency may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the appropriate Federal banking agency determines that the extension is consistent with the purposes of this Act.

(6) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) RESIDENTIAL PROPERTY.—The terms "residential real property" or "residential real estate" mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Comptroller) and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

(B) LOANS.—The term "loans" includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

(d) REGULATORY AUTHORITY.—

(1) IN GENERAL.—

(A) ENFORCEMENT.—The appropriate Federal banking agency shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and regulations pre-

scribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the appropriate Federal banking agency is a party or in which the appropriate Federal banking agency is interested, and in the administration of conservatorships and receiverships, the appropriate Federal banking agency may act in the name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency. Except as otherwise provided, the Comptroller shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings association's home office is located, or in the United States District Court for the District of Columbia, and the Comptroller may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the appropriate Federal banking agency shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term "affiliate" has the same meaning as in section 2(b) of the Banking Act of 1933, except that the term "member bank" in section 2(b) shall be deemed to refer to a savings association.

(ii) In the course of any examination of any savings association, upon request by the appropriate Federal banking agency, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the appropriate Federal banking agency shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iv) If prompt and complete access upon request is not given as required in this subsection, the appropriate Federal banking agency may apply to the United States district court for the judicial district (or the United States

court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided.

(v) In connection with examinations of savings associations and affiliates thereof, the appropriate Federal banking agency may—

(I) administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and

(II) issue subpoenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(vi) In any proceeding under this section, the appropriate Federal banking agency may administer oaths and affirmations, take depositions, and issue subpenas. The Comptroller may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the appropriate Federal banking agency in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

(2) CONSERVATORSHIPS AND RECEIVERSHIPS.—

(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The appropriate Federal banking agency may appoint a conservator or receiver for an insured savings association if the appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency, that 1 or

more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists.

(B) POWER OF APPOINTMENT; JUDICIAL REVIEW.—The appropriate Federal banking agency shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the appropriate Federal banking agency, a ground for the appointment of a conservator or receiver for a savings association exists, the appropriate Federal banking agency is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the appropriate Federal banking agency to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the appropriate Federal banking agency to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(C) REPLACEMENT.—The appropriate Federal banking agency may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

(D) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the appropriate Federal banking agency, to restrain or affect the exercise of powers or functions of a conservator or receiver.

(E) POWERS.—

(i) IN GENERAL.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the appropriate Federal banking agency.

(ii) FDIC AS CONSERVATOR OR RECEIVER.—Except as provided in section 21A of the Federal Home Loan Bank Act, the appropriate Federal banking agency, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation as conservator for a savings association. The appropriate Federal banking agency shall appoint only the Federal Deposit Insur-

ance Corporation as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law.

(F) 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 a savings 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.

(3) REGULATIONS.—

(A) IN GENERAL.—The Comptroller may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Comptroller may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

(B) FDIC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation is the conservator or receiver, any regulations prescribed by the Comptroller shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

(4) REFUSAL TO COMPLY WITH DEMAND.—Whenever a conservator or receiver appointed by the appropriate Federal banking agency demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both.

(5) DEFINITIONS.—As used in this subsection, the term "savings association" includes any savings association or former savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.

(6) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(A) COMPLIANCE PROCEDURES REQUIRED.—The Comptroller shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(i) IN GENERAL.—Each examination of a savings association by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under subparagraph (A).

(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that a savings association—

(i) has failed to establish and maintain the procedures described in subparagraph (A); or

(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the appropriate Federal banking agency,

the appropriate Federal banking agency shall issue an order under section 8 of the Federal Deposit Insurance Act requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

(7) REGULATION AND EXAMINATION OF SAVINGS ASSOCIATION SERVICE COMPANIES, SUBSIDIARIES, AND SERVICE PROVIDERS.—

(A) GENERAL EXAMINATION AND REGULATORY AUTHORITY.—A service company or subsidiary that is owned in whole or in part by a savings association shall be subject to examination and regulation by the appropriate Federal banking agency to the same extent as that savings association.

(B) EXAMINATION BY OTHER BANKING AGENCIES.—The appropriate Federal banking agency may authorize any other Federal banking agency that supervises any other owner of part of the service company or subsidiary to perform an examination described in subparagraph (A).

(C) APPLICABILITY OF SECTION 8 OF THE FEDERAL DEPOSIT INSURANCE ACT.—A service company or subsidiary that is owned in whole or in part by a saving association shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act as if the service company or subsidiary were an insured depository institution. In any such case, the Federal Deposit Insurance Corporation or the Comptroller, as appropriate, shall be deemed to be the appropriate Federal banking agency, pursuant to section 3(q) of the Federal Deposit Insurance Act.

(D) SERVICE PERFORMED BY CONTRACT OR OTHERWISE.—Notwithstanding subparagraph (A), if a savings association, a subsidiary thereof, or any savings and loan affiliate

or entity, as identified by section 8(b)(9) of the Federal Deposit Insurance Act, that is regularly examined or subject to examination by the appropriate Federal banking agency, causes to be performed for itself, by contract or otherwise, any service authorized under this Act or, in the case of a State savings association, any applicable State law, whether on or off its premises—

(i) such performance shall be subject to regulation and examination by the appropriate Federal banking agency to the same extent as if such services were being performed by the savings association on its own premises; and

(ii) the savings association shall notify the appropriate Federal banking agency of the existence of the service relationship not later than 30 days after the earlier of—

(I) the date on which the contract is entered into; or

(II) the date on which the performance of the service is initiated.

(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.

(8) DEFINITIONS.—For purposes of this section—

(A) the term "service company" means—

(i) any corporation—

(I) that is organized to perform services authorized by this Act or, in the case of a corporation owned in part by a State savings association, authorized by applicable State law; and

(II) all of the capital stock of which is owned by 1 or more insured savings associations; and

(ii) any limited liability company—

(I) that is organized to perform services authorized by this Act or, in the case of a company, 1 of the members of which is a State savings association, authorized by applicable State law; and

(II) all of the members of which are 1 or more insured savings associations;

(B) the term "limited liability company" means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) that provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and

(C) the terms "State savings association" and "subsidiary" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(e) CHARACTER AND RESPONSIBILITY.—A charter may be granted only—

(1) to persons of good character and responsibility,

(2) if in the judgment of the Comptroller a necessity exists for such an institution in the community to be served,

(3) if there is a reasonable probability of its usefulness and success, and

(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—After the end of the 6-month period beginning on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.

(h) DISCRIMINATORY STATE AND LOCAL TAXATION PROHIBITED.—No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) CONVERSIONS.—

(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Comptroller shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

(2) AUTHORITY OF COMPTROLLER.—(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Comptroller.

(B) Any aggrieved person may obtain review of a final action of the Comptroller which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 10(j) of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Comptroller, whichever is later.

(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

(3) CONVERSION TO STATE ASSOCIATION.—(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the

State in which the principal office of such Federal savings association is located if—

(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

(ii) such conversion of a Federal savings association into such a State savings association is determined—

(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and

(II) upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof; and such notice shall be mailed, postage prepaid, at least 30 and not more than 60 days prior to the date of the meeting, to the Comptroller and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

(v) when a stock savings association is dissolved after conversion, the stockholders will share on an equitable basis in the assets of the association; and

(vi) such conversion shall be effective upon the date that all the provisions of this Act shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Comptroller may impose under this Act.

(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Comptroller for issuance by similar savings associations in such State.

(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

(4) SAVINGS BANK ACTIVITIES.—(A) To the extent authorized by the Comptroller, but subject to section 18(m)(3) of the Federal Deposit Insurance Act—

(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

(ii) any Federal savings bank in existence on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

(5) CONVERSION TO NATIONAL OR STATE BANK.—

(A) IN GENERAL.—Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States subject to subparagraph (B).

(B) CONDITIONS OF CONVERSION.—The authority in subparagraph (A) shall apply only if each resulting national or State bank—

(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank; and

(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act.

(C) NO MERGER APPLICATION UNDER FDIA REQUIRED.—No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this paragraph.

(D) DEFINITIONS.—For purposes of this paragraph, the terms "State bank" and "State bank supervisor" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a State bank or State savings association during any

period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.

(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(l) RETIREMENT ACCOUNTS.—A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under this paragraph.

(m) BRANCHING.—

(1) IN GENERAL.—

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

(2) DEFINITION.—For purposes of this subsection the term "branch" means any office, place of business, or facility, other than the principal office as defined by the Comptroller, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Comptroller as a branch within the meaning of such sentence.

(n) TRUSTS.—

(1) PERMITS.—The Comptroller may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Comptroller, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

(2) SEGREGATION OF ASSETS.—A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Comptroller insofar as such reports relate to the trust department of such association but nothing in this subsection shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

(3) PROHIBITIONS.—No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller.

(4) SEPARATE LIEN.—In the event of the failure of a Federal savings association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

(5) DEPOSITS.—Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

(6) OATHS AND AFFIDAVITS.—In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

(7) CERTAIN LOANS PROHIBITED.—It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

(8) FACTORS TO BE CONSIDERED.—In reviewing applications for permission to exercise the powers enumerated in this section, the Comptroller may consider—

(A) the amount of capital of the applying Federal savings association,

(B) whether or not such capital is sufficient under the circumstances of the case,

(C) the needs of the community to be served, and

(D) any other facts and circumstances that seem to it proper.

The Comptroller may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers.

(9) SURRENDER OF CHARTER.—(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Comptroller a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

(B) Upon receipt of such resolution, the Comptroller, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

(C) Upon the issuance of such a certificate by the Comptroller, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Comptroller made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

(D) The Comptroller may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

(10) REVOCATION.—(A) In addition to the authority conferred by other law, if, in the opinion of the Comptroller, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Comptroller may issue

and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Comptroller sets an earlier or later date at the request of any Federal savings association so served.

(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Comptroller, the Comptroller may authorize the conversion of a State-chartered savings bank into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be insured by the Deposit Insurance Fund.

(B) The Comptroller shall notify the Corporation of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Corporation of the determination of the Comptroller with respect to such application.

(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Comptroller, that severe finan-

cial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Comptroller with a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank shall be converted or chartered by the Comptroller, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

(p) CONVERSIONS.—(1) Notwithstanding any other provision of law, and consistent with the purposes of this Act, the Comptroller may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Comptroller.

(2) Authorizations under this subsection may be made only—

(A) if the Comptroller has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act, or

(C) to assist an institution in receivership.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would

apply to it if it were chartered as a Federal savings bank under any other provision of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Board under this subsection shall in any manner constitute a defense to such action.

(5) For purposes of this subsection, the term "loan" includes obligations and extensions or advances of credit.

(6) EXCEPTIONS.—The Board may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Board in consultation with the Comptroller and the Corporation, considers will not be contrary to the purposes of this subsection and which conform to exceptions granted by the Board pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970.

(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 10(m) of this Act. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) or as a qualified thrift lender, as determined under section 10(m) of this Act, as applicable.

(2) The limitations of paragraph (1) shall not apply if—

(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the association was a savings association or savings bank chartered by the State in which its home office is located; or

(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

(3) The Comptroller of the Currency, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this 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 Comptroller of the Currency shall require all savings associations to achieve and maintain adequate capital by—

(A) establishing minimum levels of capital for savings associations; and

(B) using such other methods as the Comptroller of the Currency determines to be appropriate.

(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY DIRECTOR CASE-BY-CASE.—The Comptroller of the Currency may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Comptroller of the Currency deter-

mines to be necessary or appropriate for such association in light of the particular circumstances of the association.

(3) UNSAFE OR UNSOUND PRACTICE.—In the discretion of the appropriate Federal banking agency, the appropriate Federal banking agency, may treat the failure of any savings association to maintain capital at or above the minimum level required by the Comptroller under this subsection or subsection (t) as an unsafe or unsound practice.

(4) DIRECTIVE TO INCREASE CAPITAL.—

(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the appropriate Federal banking agency may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the appropriate Federal banking agency to submit and adhere to a plan for increasing capital which is acceptable to the appropriate Federal banking agency.

(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The appropriate Federal banking agency may—

(A) consider a savings 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 appropriate Federal banking agency 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 appropriate Federal banking agency; and

(B) disapprove any proposal referred to in subparagraph (A) if the appropriate Federal banking agency determines that the proposal would adversely affect the ability of the association to comply with such plan.

(t) CAPITAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIREMENT FOR STANDARDS TO BE PRESCRIBED.—The appropriate Federal banking agency shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

(i) a leverage limit;

(ii) a tangible capital requirement; and

(iii) a risk-based capital requirement.

(B) COMPLIANCE.—A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

(C) STRINGENCY.—The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

(2) CONTENT OF STANDARDS.—

(A) LEVERAGE LIMIT.—The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

(B) TANGIBLE CAPITAL REQUIREMENT.—The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

(C) RISK-BASED CAPITAL REQUIREMENT.—Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

(A) IN GENERAL.—In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings association's capital.

(B) EXCEPTION FOR AGENCY ACTIVITIES.—Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any of the following:

(i) MORTGAGE BANKING SUBSIDIARIES.—A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

(ii) SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—A savings association's investments in and extensions of credit to a subsidiary—

(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

(iii) CERTAIN FEDERAL SAVINGS BANKS.—Any Federal savings association existing as a Federal savings asso-

ciation on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(E) CONSOLIDATION OF SUBSIDIARIES NOT SEPARATELY CAPITALIZED.—In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital pursuant to subparagraph (A).

(6) CONSEQUENCES OF FAILING TO COMPLY WITH CAPITAL STANDARDS.—

(A)

(B) ON OR AFTER JANUARY 1, 1991.—On or after January 1, 1991, the appropriate Federal banking agency—

(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the appropriate Federal banking agency (which may include such restrictions, including restrictions on the payment of dividends and on compensation, as the appropriate Federal banking agency determines to be appropriate).

(C) LIMITED GROWTH EXCEPTION.—The appropriate Federal banking agency may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

(i) the savings association obtains the prior approval of the appropriate Federal banking agency;

(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the discretion of the appropriate Federal banking agency if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in assets multiplied by the percentage amount of the leverage limit);

(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-

family residences and fully secured consumer loans; and

(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(D) ADDITIONAL RESTRICTIONS IN CASE OF EXCESSIVE RISKS OR RATES.—The appropriate Federal banking agency may restrict the asset growth of any savings association that the appropriate Federal banking agency determines is taking excessive risks or paying excessive rates for deposits.

(E) FAILURE TO COMPLY WITH PLAN, REGULATION, OR ORDER.—The appropriate Federal banking agency may treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

(F) EFFECT ON OTHER REGULATORY AUTHORITY.—This paragraph does not limit any authority of the appropriate Federal banking agency under this Act or any other provision of law.

(7) EXEMPTION FROM CERTAIN SANCTIONS.—

(A) APPLICATION FOR EXEMPTION.—Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the appropriate Federal banking agency for an exemption from any applicable sanction or penalty for noncompliance which the appropriate Federal banking agency may impose under this Act.

(B) EFFECT OF GRANT OF EXEMPTION.—If the appropriate Federal banking agency approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the appropriate Federal banking agency under this Act for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

(i) APPROVAL.—The appropriate Federal banking agency may approve an application for an exemption if the appropriate Federal banking agency determines that—

(I) such exemption would pose no significant risk to the Deposit Insurance Fund;

(II) the savings association's management is competent;

(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

(ii) DENIAL OR REVOCATION OF APPROVAL.—The appropriate Federal banking agency shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the appropriate Federal banking agency determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

(I) a pattern of consistent losses;

(II) substantial dissipation of assets;

(III) evidence of imprudent management or business behavior;

(IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or

(V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

(D) SUBMISSION OF PLAN REQUIRED.—Any application submitted under subparagraph (A) shall be accompanied by a plan which—

(i) meets the requirements of paragraph (6)(A)(ii); and

(ii) is acceptable to the appropriate Federal banking agency.

(E) FAILURE TO COMPLY WITH PLAN.—The appropriate Federal banking agency shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

(F) EXEMPTION NOT AVAILABLE WITH RESPECT TO UNSAFE OR UNSOUND PRACTICES.—This paragraph does not limit any authority of the appropriate Federal banking agency under any other provision of law, including section 8 of the Federal Deposit Insurance Act, to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

(8)

(9) DEFINITIONS.—For purposes of this subsection—

(A) CORE CAPITAL.—Unless the Comptroller prescribes a more stringent definition, the term "core capital" means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets.

(B) TANGIBLE CAPITAL.—The term "tangible capital" means core capital minus any intangible assets (as intangible assets are defined by the Comptroller for national banks).

(C) TOTAL ASSETS.—The term "total assets" means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining

compliance with the leverage limit applicable to national banks if the savings association were a national bank.

(10) USE OF COMPTROLLER'S DEFINITIONS.—

(A) IN GENERAL.—The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

(B) SPECIAL RULE.—If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the appropriate Federal banking agency shall use the definition and standard contained in the Comptroller's most recently published final regulations.

(u) LIMITS ON LOANS TO ONE BORROWER.—

(1) IN GENERAL.—Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

(2) SPECIAL RULES.—

(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

(i) For any purpose, not to exceed $500,000.

(ii) To develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if—

(I) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

(II) the appropriate Federal banking agency, by order, permits the savings association to avail itself of the higher limit provided by this clause;

(III) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(IV) such loans comply with all applicable loan-to-value requirements.

(B) A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus.

(3) AUTHORITY TO IMPOSE MORE STRINGENT RESTRICTIONS.—The appropriate Federal banking agency may impose more stringent restrictions on a savings association's loans to one borrower if the appropriate Federal banking agency determines that such restrictions are necessary to protect the safety and soundness of the savings association.

(v) REPORTS OF CONDITION.—

(1) IN GENERAL.—Each association shall make reports of conditions to the appropriate Federal banking agency which shall be in a form prescribed by the appropriate Federal banking agency and shall contain—

(A) information sufficient to allow the identification of potential interest rate and credit risk;

(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

(C) the identity of all subsidiaries and affiliates of the association;

(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

(E) other information that the appropriate Federal banking agency may prescribe.

(2) PUBLIC DISCLOSURE.—

(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the appropriate Federal banking agency determines—

(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, or the Deposit Insurance Fund; or

(ii) that public disclosure would not otherwise be in the public interest.

(B) Any determination made by the appropriate Federal banking agency under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the appropriate Federal banking agency restricts any item of information for savings institutions generally, the appropriate Federal banking agency shall disclose the reason in detail in the Federal Register.

(C) The determinations of the appropriate Federal banking agency under subparagraph (A) shall not be subject to judicial review.

(3) ACCESS BY CERTAIN PARTIES.—

(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and their designees.

(4) FIRST TIER PENALTIES.—Any savings association which—

(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

(i) fails to submit or publish any report or information required by the appropriate Federal banking agency under paragraph (1) or (2), within the period of time specified by the appropriate Federal banking agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderence of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(5) SECOND TIER PENALTIES.—Any savings association which—

(A) fails to submit or publish any report or information required by the appropriate Federal banking agency under paragraph (1) or (2), within the period of time specified by the appropriate Federal banking agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (4) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(6) THIRD TIER PENALTIES.—If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the appropriate Federal banking agency may assess a penalty of not more than $1,000,000 or 1 percent of total assets, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(7) ASSESSMENT.—Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(8) HEARING.—Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) IN GENERAL.—

(A) CONVICTION OF TITLE 18 OFFENSE.—

(I) DUTY TO NOTIFY.—If a Federal savings association has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Comptroller a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(II) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Comptroller shall issue to the savings association a notice of the intention of the Comptroller to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receiving written notification from the Attorney General, the Comptroller may issue to the savings association a notice of the intention of the Comptroller to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the savings association knew of, were involved in, the commission of the money laundering offense of which the association was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(3) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(4) DEFINITION.—The term "senior executive officer" has the same meaning as in regulations prescribed under section 32(f) of the Federal Deposit Insurance Act.

(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.

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MINORITY VIEWS

This bill would allow new banks, referred to as *de novo* banks, and their holding companies to have lower capital requirements than they otherwise should have for their first three years, with additional capital reductions for rural *de novo* community banks by allowing them to be subject to below 8% Community Bank Leverage Ratio (CBLR) in their first two years before reaching 8% in their third year (currently, community banks must have 9% CBLR to be exempt from other capital requirements[1]). The bill also limits regulatory review of revised business plans for *de novo* banks and their holding companies to 30 days, otherwise they are automatically approved. Finally, it eliminates a cap on agricultural loans made by thrift banks that was established following the Savings & Loan Crisis in the 1980s and 1990s.[2] Of note, there are no reforms to support *de novo* credit union formation. The bill also appears to allow any large bank holding company to establish a small *de novo* bank subsidiary, and then their holding company would be subject to reduced capital requirements phased in over 3 years and expedited business plan reviews, which would further reduce safety and soundness of the banking system. The Committee passed a similar bill by a party-line 24–22 vote in the last Congress.[3]

In the years following the 2008 financial crisis, *de novo* bank charters hit record lows, and in 2014 and 2016, there were no *de novo* charters at all.[4] Research suggests that new charter activity is typically cyclical,[5] following trends in the economy, which aligns with the Fed's research which found that nearly 80% of the decline in new charter activity between 2009 and 2013 was not a result of regulatory requirements, but rather economic factors like the low interest rate environment.[6] Indeed, experts have identified a strong correlation between the Federal Funds Rate set by the Federal Reserve and the number of *de novo* banks formed in a given year going back to at least the 1950s.[7]

Experts have raised several concerns with the approach outlined by H.R. 758, including safety and soundness concerns relating to

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[1] *See* CRS, *Community Bank Leverage Ratio (CBLR): Background and Analysis of Bank Data* (May 11, 2020). Regulators temporarily reduced CBLR to 8% during the pandemic before raising it back to 9% by 2022, where it was originally set.

[2] Currently, Section 5(c) of the Home Owners' Loan Act stipulates that savings associations (i.e. thrift banks) have a cap where the combined amount of agricultural, commercial, corporate, and business loans may not exceed more than 20% of their total assets.

[3] H.R. 758 (118th Cong.).

[4] FDIC, BankFind Suite: Find Annual Historical Bank Data, (Accessed Sept. 12, 2021).

[5] FDIC, Supervisory Insights: Vol. 13, Issue 1—Summer 2016, (2016), p. 3–8.

[6] Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, *Where Are All the New Banks? The Role of Regulatory Burden in New Charter Creation* (2014).

[7] *See* PSP Lab, Top reasons why you should get a banking license in 2023 (e.g. "Entrepreneurs know this: new banking licenses are correlated with short-term rates.") (Apr. 12, 2023), https://psplab.com/top-reasons-why-you-should-get-banking-license-in-2023/; and Federal Reserve Bank of Kansas City, Considering Bank Age and Performance for De Novo Status (2nd Quarter, 2022), https://www.kansascityfed.org/Economic%20Review/documents/8844/EconomicReviewV107N2JonesMyersWilkinson.pdf.

allowing new banks to have less capital and quickly shifting business plans since many *de novos* tend to fail in their first few years. As Renita Marcelin from Americans for Financial Reform explained in testimony, "a 2016 FDIC study concluded that most *de novo* banks do not fail during their early years when they are required to have high capital cushions relative to established banks but instead fail when their capital requirements are similar to that of other banks. This only underscores the role capital requirements play in creating resilient banks. All banks, especially new ones, must have an adequate capital cushion to absorb their losses during times of stress to avoid failing and potentially causing contagion." [8]

Committee Democrats support reasonable proposals that will support the creation of new banks and credit unions and previously held hearings discussing barriers that community financial institutions face, including consolidation, needed technology updates, and access to capital and liquidity.[9] There also has been a troubling decline of roughly one-third of all minority depository institutions (MDIs) and more than half of Black-owned banks since the 2008 financial crisis. Democrats advanced through the House a series of bipartisan legislative proposals to strengthen community development financial institutions (CDFIs) and MDIs, building on the bipartisan work during the pandemic to provide $12 billion in capital investments and grants to improve CDFIs and MDIs ability to provide financial access to underserved communities.[10] This includes H.R. 4590 (117th Cong.), the Promoting New and Diverse Depository Institutions Act, which the House passed three times, including by voice vote as a standalone bill. Instead of taking a deregulatory approach as provided by H.R. 478, the Promoting New and Diverse Depository Institutions Act would require Federal regulators to conduct a study examining the challenges that prospective *de novo* banks and credit unions face and to develop a first of its kind coordinated strategic plan based on that study to promote the creation of newly chartered institutions. Ranking Member Waters offered a substitute amendment with language similar to H.R. 4590 (117th Cong.), however Republicans rejected the amendment and it failed on a voice vote.

This bill is opposed by Americans for Financial Reform, Center for Responsible Lending, Consumer Federation of America, National Consumer Law Center (on behalf of its low-income clients), and Public Citizen.

For these reasons, we oppose H.R. 478.

Sincerely,

MAXINE WATERS,
Ranking Member.
AL GREEN,
BILL FOSTER,

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[8] Testimony of *Ms. Renita Marcellin*, Advocacy and Legislative Director, Americans for Financial Reform at FSC hearing, *Revamping and Revitalizing Banking in the 21st Century* (Feb. 8, 2023).

[9] See FSC, *An Unprecedented Investment for Historic Results: How Federal Support for MDIs and CDFIs Have Launched a New Era for Disadvantaged Communities* (Feb. 16, 2022); FSC, *The Future of Banking: How Consolidation, Nonbank Competition and Technology are Reshaping the Banking System* (Sep. 29, 2021).

[10] FSC, *Waters Announces Committee Victories in 2023 National Defense and Authorization Act* (Jul. 18, 2022).

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