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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

November 22, 1993

SECRETARY OF THE TREASURY

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, DC 20510

Dear Don:

Enclosed is the Administration's proposal to consolidate the four existing federal bank regulatory agencies into a single new agency, the Federal Banking Commission.

This proposal responds to your request for Under Secretary Newman to present the Administration's views on regulatory consolidation.

We believe the time has come to rationalize and simplify the structure of federal banking regulation. We can no longer afford the current regulatory structure, a spider's web of overlapping jurisdictions that represents a drag on our economy, a headache for our financial services industry, and a source of friction within our government. Regulatory consolidation will advance our goal of reinventing government and enabling the economy to function more efficiently.

Our proposal builds on S. 1633, which you introduced together with Senator D'Amato, as well as on H.R. 1214, Chairman Gonzalez's consolidation bill.

We intend to transmit our proposal to Congress in legislative language early next year. We look forward to working with you and the other members of the Committee to enact these historic and long-overdue reforms.

Sincerely,

Lloyd Bentsen

Enclosures



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

November 22, 1993

The Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance and
Urban Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. ~~Chairman~~ *Henry* —

Enclosed is the Administration's proposal to consolidate the four existing federal bank regulatory agencies into a single new agency, the Federal Banking Commission.

We believe the time has come to rationalize and simplify the structure of federal banking regulation. We can no longer afford the current regulatory structure, a spider's web of overlapping jurisdictions that represents a drag on our economy, a headache for our financial services industry, and a source of friction within our government. Regulatory consolidation will advance our goal of reinventing government and enabling the economy to function more efficiently.

Our proposal builds on H.R. 1214, the Regulatory Consolidation Act of 1993, which you introduced earlier in this Congress, as well as on S. 1633, the Riegle-D'Amato bill.

We intend to transmit our proposal to Congress in legislative language early next year. We look forward to working with you and the other members of the Committee to enact these historic and long-overdue reforms.

Sincerely,

Lloyd Bentsen
Lloyd Bentsen

Enclosures

Consolidating the Federal Bank Regulatory Agencies



The Honorable Frank N. Newman
Under Secretary of the Treasury

Proposal Requested by the
Committee on Banking, Housing, and Urban Affairs
United States Senate

November 23, 1993

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Summary of the Administration's Proposal to Consolidate the Bank Regulatory Agencies

- The proposal would establish a Federal Banking Commission, an independent agency that would regulate all FDIC-insured depository institutions and their holding companies and other affiliates.
- The Commission would have all the depository institution regulatory functions currently exercised by:
 - the Comptroller of the Currency (as charterer and regulator of national banks);
 - the Federal Reserve Board (as primary federal regulator of bank holding companies and of state-chartered banks that are members of the Federal Reserve System);
 - the Federal Deposit Insurance Corporation (as primary federal regulator of state-chartered banks that are not members of the Federal Reserve System); and
 - the Office of Thrift Supervision (as charterer and regulator of federal savings associations, and primary federal regulator of savings and loan holding companies and state-chartered savings associations).
- The Commission would have five members:
 - a Chairperson appointed by the President and confirmed by the Senate, serving a four-year term (both as a member and as Chairperson) expiring on the last day of March following a Presidential election;
 - the Secretary of the Treasury (or the Secretary's designee);
 - a member of the Federal Reserve Board, designated by the Board;
 - and

- two members appointed by the President and confirmed by the Senate, serving staggered five-year terms.
- The FDIC would continue to insure deposits at all federally insured banks and savings associations. It would resolve failed or failing institutions. It would retain its current statutory authority as deposit insurer (e.g., to grant and withdraw deposit insurance; conduct special examinations of insured institutions to protect the deposit insurance fund; take "back-up" enforcement action to stop risky practices at such institutions if the Federal Banking Commission failed to do so; and help determine whether a critically undercapitalized institution should remain open).
- The Federal Reserve, as the nation's central bank, would continue to conduct monetary policy, administer the payment system, and provide liquidity to financial markets through the discount window.
- The FDIC and Federal Reserve, in carrying out their respective responsibilities, would have access to all records of the Federal Banking Commission relating to depository institutions or their holding companies, including all data and examination reports.
- The states would remain the primary regulators of the banks they charter, thus preserving the integrity of the dual banking system. Moreover, the Federal Banking Commission would use state examinations as appropriate, consistent with the statute requiring periodic examinations.
- The consolidation of regulatory functions would occur on a date set by the Secretary of the Treasury, preferably within ten months after the proposal became law. The Secretary would, however, have discretion to allow an additional five months.

The Administration's Proposal to Consolidate the Federal Bank Regulatory Agencies

I. Introduction

The need to restructure the federal bank and thrift regulatory system has steadily increased over the past several decades, as distinctions among depository institutions have blurred and the regulatory system has grown more costly and complex. The time has come for bold comprehensive action.

The current federal regulatory structure is needlessly disjointed and convoluted. Four different agencies regulate depository institutions insured by the Federal Deposit Insurance Corporation (FDIC). The Office of the Comptroller of the Currency (OCC) charters and regulates national banks. The Federal Reserve Board, in addition to conducting monetary policy, regulates bank holding companies (i.e., companies that control banks) and state-chartered banks that are members of the Federal Reserve System. The Federal Reserve Board also has overlapping responsibilities for regulating foreign banks' U.S. operations and U.S. banks' foreign operations. The FDIC, in addition to insuring deposits, regulates state-chartered banks that are not members of the Federal Reserve System. The Office of Thrift Supervision (OTS) charters and regulates federal savings associations, and also regulates savings and loan holding companies (i.e., companies that control savings associations) and state-chartered savings associations. In addition, the FDIC has back-up authority to stop unsafe practices at any FDIC-insured institution if the institution's primary federal regulator fails to do so. (Appendix A depicts the current federal regulatory structure.)

This structure did not result from any well-thought-out plan. Indeed, as Senate Banking Committee Chairman Riegle has observed, "no thoughtful person would ever design such a system from scratch." Instead, the structure arose over time as the Federal Government, in response to crises and changing needs, established new agencies and expanded existing agencies' responsibilities without ever significantly rationalizing and simplifying the structure.

Congress created the OCC in 1863 to help finance the Civil War. It established the Federal Reserve System in 1913 to stabilize the national economy after a series of banking panics. It created the FDIC in 1933, after

the banking system collapsed during the Great Depression. The following year, it extended federal regulation and deposit insurance to the thrift industry through the Federal Home Loan Bank Board, which became the OTS in 1989, and the now-defunct Federal Savings and Loan Insurance Corporation. It instituted holding company regulation in 1956 for banks and in 1968 for savings associations. It applied federal regulation to foreign banks in 1978.

Each new layer of the bank and thrift regulatory system achieved some measure of success, but the system -- considered as a system -- makes little sense. It is a crazyquilt: a patchwork lacking any coherent overall design. (An excellent chart published by the Federal Reserve Bank of New York, entitled "Depository Institutions and Their Regulators," uses 12 columns, 17 lines, and 31 footnotes to explain which regulator handles what.)

To address the practical problems inherent in this system, Congress in 1979 created the Federal Financial Institutions Examination Council (FFIEC) to coordinate examination policies and procedures among the federal banking agencies. Unfortunately, despite the progress achieved under the FFIEC's auspices, the FFIEC has fallen far short of solving these large and complex problems.

Our balkanized regulatory system also reflects a bygone era in which commercial banks, savings banks, savings associations, and other financial institutions operated largely within their own specialized market niches. But these distinctions have eroded over time in the face of such forces as new information technology, financial innovation, deregulation, increasing consumer sophistication, and global competition. These developments have exposed the system's latent and glaring faults.

II. Previous Reform Proposals

Many proposals to consolidate depository institution regulation have emerged over the past half-century. Their proponents have included a task force of the Commission on Organization of the Executive Branch of Government, commonly known as the Hoover Commission, 1949; the Commission on Money and Credit, 1961; House Banking Committee Chairman Wright Patman, 1965; the Hunt Commission, 1971; the House Banking Committee's Study of Financial Institutions in the Nation's Economy, 1975;

Senate Banking Committee Chairman Proxmire, 1975; the Private Sector Survey on Cost Control, commonly known as the Grace Commission, 1983; Vice President Bush's Task Group on Regulation of Financial Services, 1984; and the Bush Administration, 1991.

Each of these studies and proposals has called for some form of regulatory consolidation, yet consolidation has remained an elusive goal. We have studied enough. Now it is time to act.

III. Rationale for Consolidation

Under the current bank and thrift regulatory system, each of the federal banking agencies has its own team of examiners, its own bureaucracy, and its own regulations. This overlap and confusion generates needless expense and endless confusion for the nation's insured depository institutions. Coordination is an inherently time-consuming process that yields only limited results. Even identical regulations are implemented and interpreted differently.

Further, current trends in the financial services industry provide a strong rationale for consolidating the bank and thrift regulatory system and rationalizing our fragmented supervisory system. Competition from other providers of financial services is shrinking profit margins in banking, making it increasingly important for banks and thrifts to minimize non-interest expenses. The cost of supporting multiple regulators is becoming increasingly unaffordable.

The OTS's current budgetary constraints give impetus to merging federal bank and thrift regulators as soon as possible. The OTS funds itself through assessments on OTS-regulated institutions. A shrinking thrift industry means a shrinking assessment base, and the OTS's assessment base has fallen by more than 30 percent since 1990. In response, the OTS has cut its staff by one-third, frozen senior managers' salaries, limited staff merit-pay increases, consolidated its 12 district offices into 5 regional offices and cut total operating expenses by more than 25 percent. Yet even after all these economies, the OTS will have great difficulty meeting its current expenses from its assessment base. This difficulty is just one reflection of the continually changing markets for financial services. A consolidated agency could better adapt to such changes by redeploying resources.

Consolidation in the banking industry is increasing the number of banking organizations with subsidiaries that operate under different charters. Consider the case of a bank holding company with national bank, state nonmember bank, and savings association subsidiaries, as depicted in Appendix B. This company must deal with four separate primary federal regulators. This problem affects a large segment of the industry. As illustrated in Appendix C, 47 percent of total bank and thrift assets are held by banking organizations with three or four federal regulators.

We now have an historic opportunity to rationalize the structure of federal banking regulation. The Chairmen of the Senate and House Banking Committees have advanced well-considered and similar proposals based on the principle of unitary regulation. Today the Administration joins that effort with an approach that incorporates many of the highly constructive elements of H.R. 1214 (Chairman Gonzalez and 12 other Members of the House Banking Committee) and S. 1633 (Chairman Riegle and Senator D'Amato).

IV. Objectives for Effective Agency Restructuring

Under the National Performance Review, the Vice President has challenged us to reinvent government, rather than to adhere to past ways of governing that may no longer serve the needs of the public. The principles formulated in the National Performance Review -- cutting red tape and governing efficiently -- provided the framework within which we developed our proposal. In light of these principles, we have identified the following goals as necessary for successfully restructuring the federal banking agencies:

- First, regulations and policies for comparable activities should be consistent, regardless of charter.
- Second, the restructured system should implement those regulations and policies consistently.
- Third, a successful restructuring should improve the overall efficiency and quality of supervision by regulating banking organizations as a unit and eliminating time-consuming interagency rulemakings.

- Fourth, the new system should define clear roles and functions for the remaining agencies to eliminate redundancies and assure that the agencies work cooperatively.
- And finally, the new regulator must have appropriate independence, balanced with responsibility to the electorate through a continuing Executive Branch role.

V. The Administration's Proposal

We can best achieve these objectives by realigning the bank and thrift regulators along the lines of their core functions: deposit insurance, central banking, and safety and soundness regulation. The FDIC would insure deposits. The Federal Reserve Board would conduct monetary policy, administer the payment system, and provide liquidity through the discount window. And a new agency, the Federal Banking Commission, would supervise all FDIC-insured depository institutions. The Administration's proposal would leave the core functions of the FDIC and the Federal Reserve undisturbed. (Appendix D depicts the proposed new federal regulatory structure.)

The Federal Banking Commission would regulate all federally insured banks and thrifts, all bank and thrift holding companies, U.S. banks' foreign operations, and foreign banks' U.S. operations. It would also charter national banks and federal savings associations. The Commission would thus carry out all the functions currently exercised by the OCC and OTS, as well as the FDIC's functions as primary federal regulator of state nonmember banks and the Federal Reserve's functions as primary federal regulator of bank holding companies, state member banks, and foreign banks. This consolidation of authority would ensure consistent and efficient supervision of each banking organization (holding company and its depository institutions) as a unit.

The states would remain the primary regulators of the banks they charter, thus preserving the integrity of the dual banking system. Moreover, the Federal Banking Commission would use state examinations as appropriate, consistent with the statute requiring periodic examinations.

The new Commission would have five members: the Secretary of the Treasury (or the Secretary's designee); a member of the Federal Reserve Board, designated by the Board; and three members appointed by the President and confirmed by the Senate. One of the three appointed members would be specifically appointed and confirmed as Chairperson of the Commission, and would serve a four-year term (both as a member and as Chairperson) expiring on the last day of March following a Presidential election. The two other appointed members would serve staggered five-year terms. One of these two members must be from another political party. We believe that this governing structure would properly balance the need for independence in regulatory action with the need of any Administration for an appropriate and effective voice in policies relating to the functions and structure of the banking system.

Under this framework, the FDIC would continue to insure deposits at all federally insured banks and thrifts. It would resolve failed or failing institutions. It would grant, suspend, and terminate deposit insurance. It could conduct special examinations of insured institutions to protect the deposit insurance fund. It could take back-up enforcement action to stop risky practices at such institutions if the Federal Banking Commission failed to do so. It would retain its current role as deposit insurer in carrying out the prompt corrective action statute (e.g., helping determine whether a critically undercapitalized institution should remain open).

This authority would fully enable the FDIC to perform its core functions. In fact, the FDIC testified in 1991 before both Congressional Banking Committees that "the important issue is not necessarily who the primary federal regulator is but that the FDIC have back-up examination and enforcement authority over all insured depository institutions."

The Federal Reserve, as the nation's central bank, would continue to conduct monetary policy, administer the payment system, and provide liquidity through the discount window. The Federal Reserve would retain authority to set standards for, and examine activities related to, the payment system and discount window. In addition, the Federal Reserve could participate in the Federal Banking Commission's examinations of a limited number of banking organizations most significant to the payment system. Nothing in the Administration's proposal would in any way affect the Federal Reserve System's independence in performing its core functions.

To make this new framework effective, the FDIC and Federal Reserve would have full access to bank supervisory information in order to make independent judgments on matters most directly bearing on their core functions. The Commission would be required to provide the FDIC and Federal Reserve timely and accurate information on the condition of the banking and thrift industries and on individual depository institutions.

The Commission would surely need the skills and experience of OCC, Federal Reserve, FDIC, and OTS staff members, who have carried out their regulatory responsibilities professionally and have cooperated as best they could within the current needlessly complex system.

We want to get this process moving quickly, and we believe the basic time plan outlined in S. 1633 makes good sense. Under that approach, consolidation of the regulatory functions would occur on a date set by the Secretary of the Treasury, preferably within 10 months after the proposal became law, but with the Secretary having discretion to allow an additional five months to ensure a smooth transition.

VI. Benefits of Consolidation

Secretary Bentsen, in his October 25 address to the Center for National Policy, outlined the benefits of regulatory consolidation:

"We can further streamline the existing structure and create one that can make more timely decisions. And, by eliminating duplicative regulatory agencies, we can help reduce inconsistent interpretations of the same laws and rules. Furthermore, interagency turf battles would be avoided. Finally, financial institutions could reduce their operating expenses and spend more time making sound loans than filling out papers in quadruplicate."

In short, consolidating the federal banking agencies, properly accomplished, would benefit banks, thrifts, consumers, and the economy in general.

Efficiency

Reorganization framed around core regulatory functions would improve the efficiency of depository institution regulation. A single regulator would be responsible for the entire banking organization: the depository institutions, their holding company, and affiliates. The current system of fragmented regulatory decision making, duplicative rulemaking, and delayed supervisory action would end.

Accountability

Consolidation into a single agency would fix accountability for regulating depository institutions and provide a focal point for Administration, Congressional, and public concerns regarding regulatory policy. The current system necessitates extensive interagency coordination and negotiation to bridge policy differences. Further, even with interagency policy agreements, implementation varies among the agencies. We have had to navigate through these very problems in developing and implementing the President's credit availability and Community Reinvestment Act reform initiatives.

Consistency

Consolidation would eliminate interagency inconsistencies in regulation. It would facilitate more timely and decisive action against problem institutions and more rapid processing of healthy institutions' applications to expand or engage in new activities. No bank or thrift would suffer, or benefit, from the differential application of enforcement standards or closure policies of different agencies. Thus consolidation would eradicate the current opportunities for charter-shopping and other competition in laxity. It would also provide a comprehensive, uniform, and coordinated mechanism for enforcing applicable laws and regulations.

Benefits to Customers and the Economy

Bank customers, and the economy generally, should benefit from eliminating needless compliance costs through regulatory consolidation. Customers would also benefit from uniform application and enforcement of laws and regulations designed to ensure that institutions deal fairly with their

customers. And finally, this simplified structure would mean that customers would know (or could readily ascertain) who regulates their bank. If they have a problem with an insured depository institution, they would know with whom to register their complaint.

Eliminating Potential Conflicts of Interest

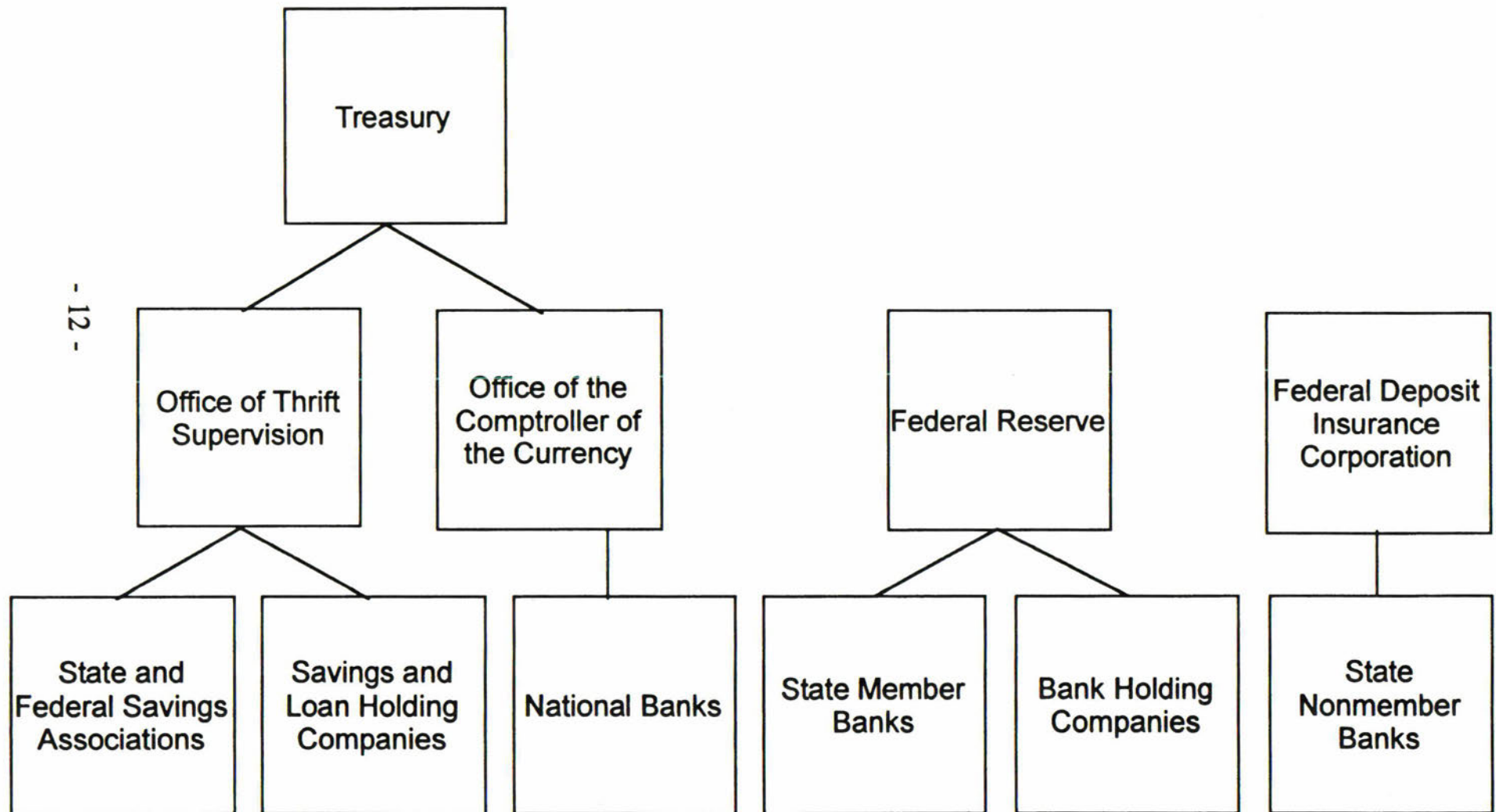
Reorganizing the bank and thrift regulatory system would also eliminate conflicts of interest and focus that could arise when an agency handles more than one core function. Under the current structure, the insurer, the central bank, and the supervisor all face such potential conflicts. The insurer has incentives to resist banking innovations if the insurance fund is solvent. On the other hand, if the insurance fund nears insolvency, the insurer has incentives to forbear. Similarly, a central bank that also has primary regulatory responsibility for specific banking institutions might be diverted from its focus on overall monetary policy. (Many countries have chosen to separate central banking from bank supervision.) Furthermore, a bank supervisor that shares supervisory authority with the other regulators might incline toward leniency, in order to maintain a constituency of institutions to supervise. The new function-based regulatory structure would eliminate these conflicts.

VII. Conclusion

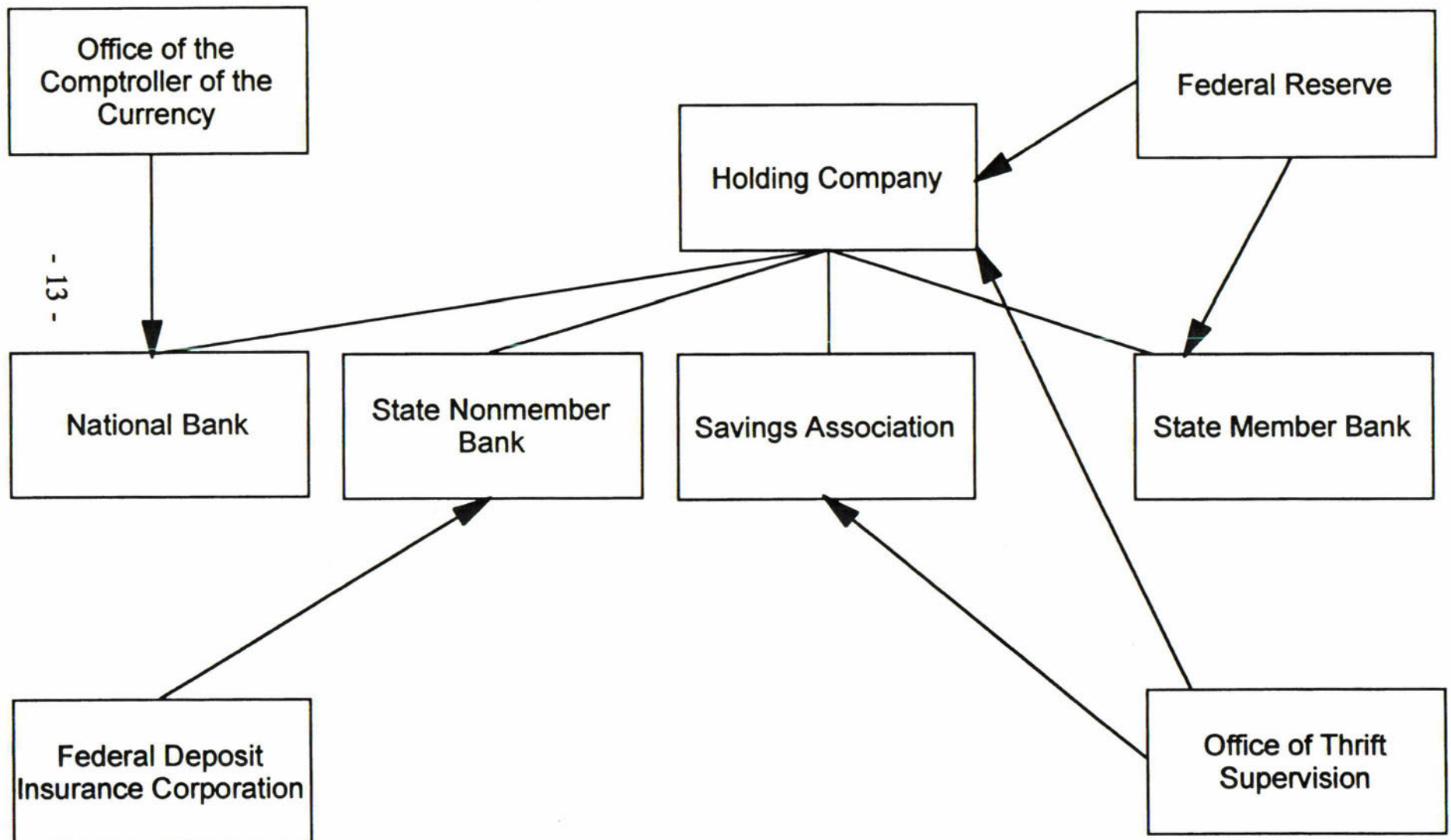
Reforming our nation's bank regulatory structure is one of the most significant steps we can take to reduce the regulatory burden on insured depository institutions. It would allow those institutions to compete more effectively and provide better service to consumers. Moreover, it would advance the Administration's overall agenda of reinventing government.

We intend to send Congress early next year legislative language to effectuate the regulatory-consolidation proposal outlined here. We look forward to working with both Banking Committees and other Members of Congress on this important issue.

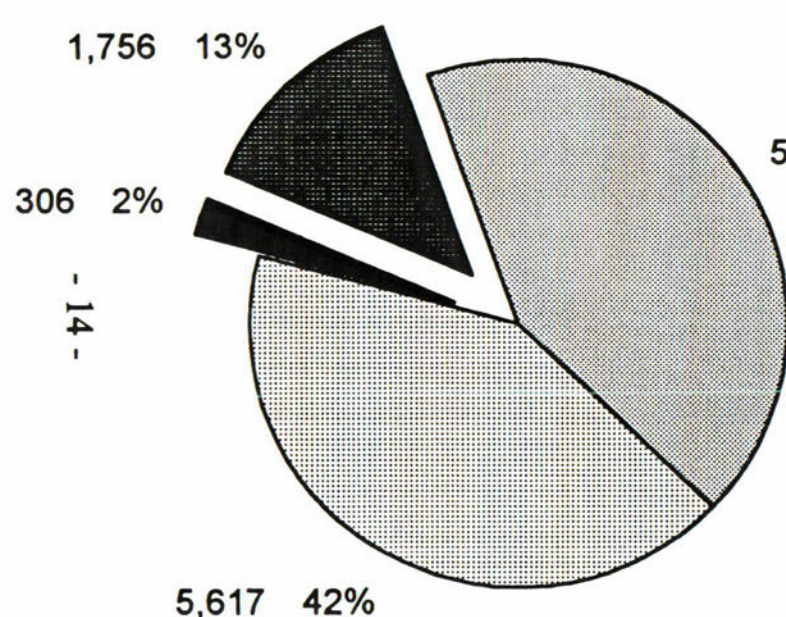
Appendix A: The Current Federal Structure for Supervising FDIC-Insured Depository Institutions and Their Holding Companies



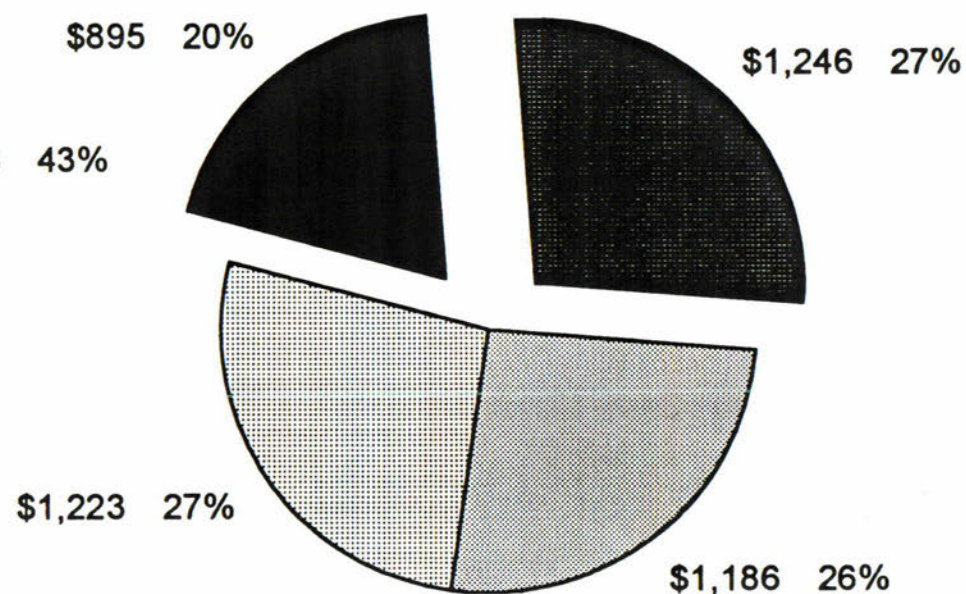
Appendix B: Consider the Case of a Bank Holding Company with National Bank, State Member Bank, State Nonmember Bank, and Savings Association Subsidiaries



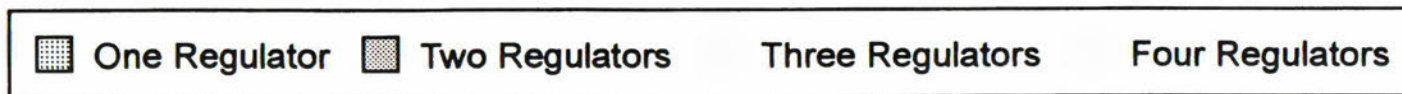
Appendix C: Most Banking Organizations Have 2, 3, or Even 4 Primary Federal Regulators



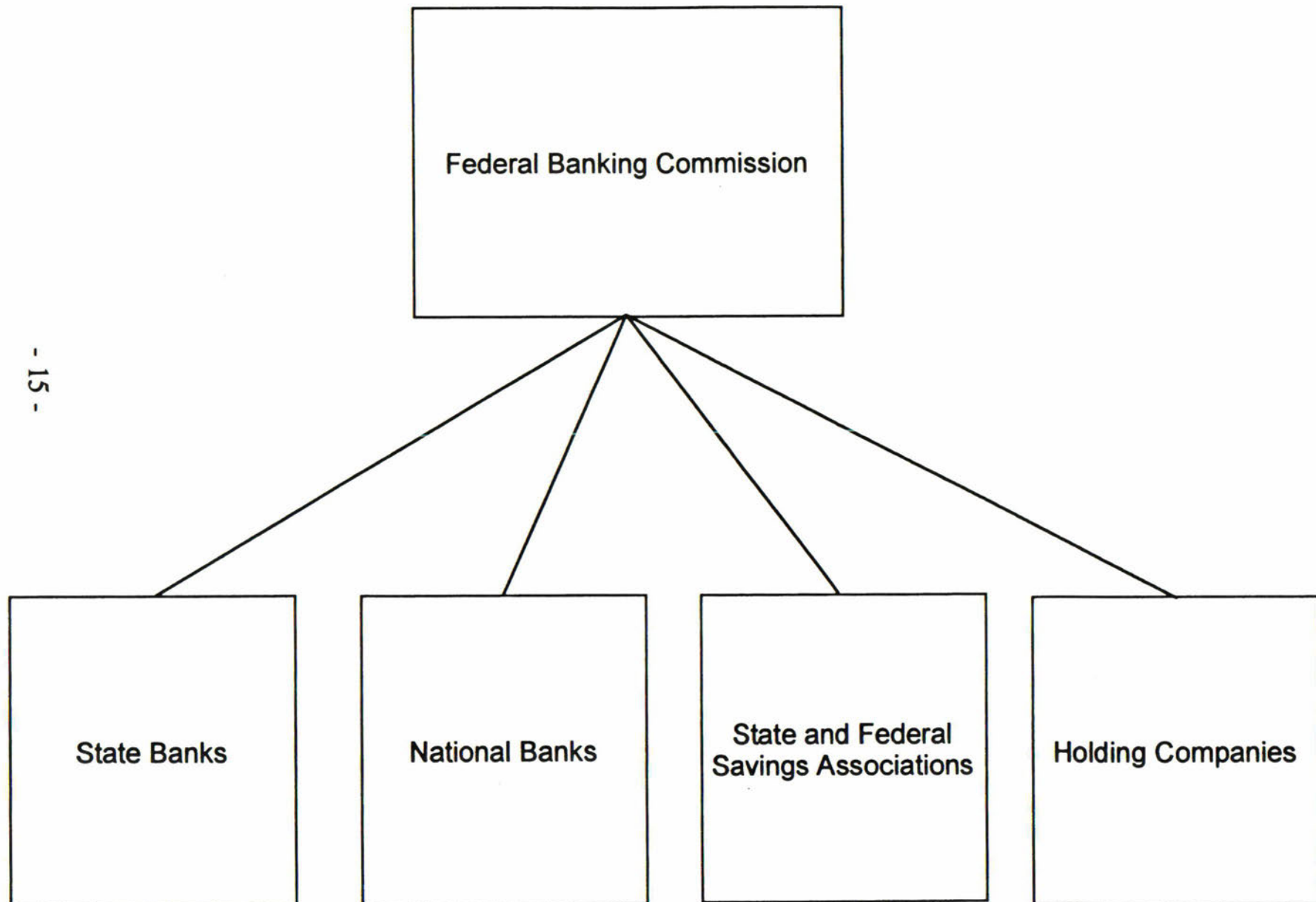
Number of Banking Organizations



Amount of Total Banking Assets
(\$Billions)



Appendix D: The Proposed Federal Structure for Supervising FDIC-Insured Depository Institutions and Their Holding Companies



**Statement by Vice President Al Gore on the
Administration's Proposal to Consolidate the
Bank Regulatory Agencies**

The bank regulatory consolidation proposal is in keeping with both the substance and the spirit of reinventing government. The new Federal Banking Commission collapses the regulatory, examination and approval functions now performed by four agencies into one. This is a major step forward in the Clinton Administration's efforts to create a government that works better and costs less.

Depository Institutions and Their Regulators

	Chartering & Licensing	Branching		Mergers, Acquisitions & Consolidations		Reserve Requirements
	1.	2. Intra-state	3. Inter-state	4. Intra-state	5. Inter-state	6.
A. National Banks	Comptroller	Comptroller	(7)	Comptroller (11)	(19)	Federal Reserve (21)
B. State Member Banks	State authority	Federal Reserve & state authority	(7)	Federal Reserve & state authority (12)	(19)	Federal Reserve (21)
C. State Nonmember Banks Insured	State authority	FDIC & state authority	(8)	FDIC & state authority (13)	FDIC & state authority	Federal Reserve (21)
D. Noninsured State Banks	State authority	State authority	(8)	State authority (14)	State authority (14)	Federal Reserve (21)
E. Insured Savings Associations Federal (1)	OTS	OTS	OTS (9)	OTS	OTS (9,15)	Federal Reserve (21)
Insured Savings Associations State (2)	State authority	OTS & state authority	OTS & state authority	OTS & state authority (15)	OTS & state authority	Federal Reserve (21)
F. Uninsured Savings Associations State	State authority	State authority	State authority	State authority	State authority	Federal Reserve (21)
G. Credit Unions Federal	NCUAB	(5)	(5)	NCUA	NCUA	Federal Reserve (21)
Credit Unions State	State authority	State authority	State authority	NCUA & state authority (16)	NCUA & state authority (16)	Federal Reserve (21)
H. Bank Holding Companies	Federal Reserve & state authority	Federal Reserve & state authority	Federal Reserve & state authority	Federal Reserve & state authority	Federal Reserve & state authority (20)	N/A
I. Savings Association Holding Companies	OTS & state authority (3)	OTS & state authority	OTS & state authority	OTS & state authority	OTS & state authority	N/A
J. Foreign Branches of U.S. Banks National & State Members	Federal Reserve & state authority	N/A	N/A	N/A	N/A	(22)
Foreign Branches of U.S. Banks Insured State Nonmembers	State authority	N/A	N/A	N/A	N/A	(22)
K. Edge Act Corporations	Federal Reserve	Federal Reserve	Federal Reserve	Federal Reserve (17)	Federal Reserve (17)	Federal Reserve (21)
Agreement Corporations	State authority (4)	Federal Reserve	Federal Reserve	Federal Reserve (17)	Federal Reserve (17)	Federal Reserve (21)
L. U.S. Branches & Agencies of Foreign Banks—Federal	Comptroller	Comptroller & FDIC (6)	Comptroller & Federal Reserve (10)	Comptroller & Federal Reserve (18)	(18)	Federal Reserve (21)
U.S. Branches & Agencies of Foreign Banks—State	State authority	State authority & FDIC (6)	State authority & Federal Reserve (10)	FDIC or Federal Reserve and state authority (18)	(18)	Federal Reserve (21)

The Matrix provides an overview of primary regulators of depository institutions as of April 1992. It is not intended to cover each area of regulatory responsibility in detail. Further, the Matrix and accompanying footnotes should not be considered either a substitute for or an interpretation of the regulations. Regulatory agencies should be consulted for answers to specific questions.

April 1992
**Federal Reserve Bank
of New York**

(1) Federal savings associations include any thrift institution such as federal savings banks, federally chartered under Section 5 of the Home Owners' Act.

(2) State savings associations include any state chartered savings bank, savings and loan association, building and loan association, homestead association, or cooperative bank.

(3) Savings association holding companies are required to register with the OTS.

(4) Agreement Corporations are subject to the restrictions on powers established by the Federal Reserve for Edge Act Corporations.

(5) Federal credit unions are not required to receive NCUA approval before opening a branch.

(6) The establishment of federal branches and agencies is subject to the within-state branching restrictions of the McFadden Act. The establishment of state branches or agencies is regulated by state banking law. A foreign bank may not relocate any insured branch within the state without the prior written consent of the FDIC.

(7) While the McFadden Act prevents interstate branching by national and state member banks, banks can provide certain services on an interstate basis.

(8) While the McFadden Act's interstate branching restrictions are not applicable to insured state non-member and non-insured state banks, state laws generally prohibit branching by out-of-state banks.

(9) Federal savings associations are prohibited from out-of-state branching unless they qualify as domestic building and loan associations under the tax laws or meet certain other requirements.

(10) Foreign banks with state or federal branches or agencies (or commercial lending companies or bank subsidiaries) are not permitted to establish a federal or state branch or agency outside their home state unless: (a) it is permitted by law in the state in which it will operate and (b) in the case of a branch, an agreement with the Federal Reserve has been entered that will limit deposits at the non-home state branch to those permitted to Edge Act Corporations.

(11) The Comptroller must approve the merger or acquisition if the resulting bank is a national bank. However, if a non-insured bank merges into a national bank, the FDIC must approve the merger.

(12) The Federal Reserve must approve the merger or acquisition if the resulting bank is a state member bank. However, if a non-insured bank merges into a state member bank, the FDIC must approve the merger.

(13) The FDIC must approve the merger or acquisition if the resulting bank is an insured state non-member bank or if a non-insured bank merges into an insured state non-member bank.

(14) In addition to state authority, the FDIC must approve mergers or acquisitions between insured depository institutions and non-insured institutions.

(15) The OTS must approve the merger or acquisition if the resulting institution is an insured savings association. However, if a non-insured institution merges into an insured savings association, the FDIC must approve the merger.

(16) The NCUA must approve the merger or acquisition if the resulting credit union is federally insured.

(17) The Federal Reserve supervises acquisitions made by Edge Act Corporations and Agreement Corporations. Agreement Corporations may merge as permitted by state authority.

LEGEND

FDIC Federal Deposit Insurance Corporation
FTC Federal Trade Commission
Federal Reserve Board of Governors of the Federal Reserve System/Federal Reserve Banks
IBF International Banking Facility

NCUA National Credit Union Administration
Member Member of the Federal Reserve System
N/A Not Applicable
OCC Office of the Comptroller of Currency
OTS Office of Thrift Supervision

Access to the Discount Window	Deposit Insurance	Supervision & Examination	Prudential Limits, Safety & Soundness	Consumer Protection	
7.	8.	9.	10.	11. Rulemaking	12. Enforcement
Federal Reserve (23)	FDIC	Comptroller (27)	Comptroller	Federal Reserve	Comptroller
Federal Reserve (23)	FDIC	Federal Reserve & state authority (27)	Federal Reserve & state authority	Federal Reserve & state authority	Federal Reserve & state authority
Federal Reserve (23)	FDIC	FDIC & state authority	FDIC & state authority	Federal Reserve & state authority	FDIC & state authority
Federal Reserve (23)	None or state insurance fund (24)	State authority	State authority	Federal Reserve & state authority	State authority & FTC (31)
Federal Home Loan Bank & Federal Reserve (23)	FDIC	OTS (27,28)	OTS & FDIC	Federal Reserve & OTS	OTS
Federal Home Loan Bank & Federal Reserve (23)	FDIC	OTS & state authority (27,28)	OTS, FDIC & state authority	Federal Reserve, OTS & state authority	OTS & State authority
Federal Home Loan Bank & Federal Reserve (23)	None or state insurance fund (24)	State authority (28)	State authority	Federal Reserve & state authority	State authority & FTC (31)
Central Liquidity Facility & Federal Reserve (23)	Credit Union Share (25)	NCUA	NCUA	Federal Reserve & state authority	NCUA
Central Liquidity Facility & Federal Reserve (23)	Credit Union Share or state insurance fund (25)	State authority	State authority	Federal Reserve & state authority	State authority & FTC (31)
N/A	N/A	Federal Reserve	Federal Reserve	Federal Reserve & state authority	FTC (31)
N/A	N/A	OTS	OTS	Federal Reserve & state authority	FTC (31)
N/A	N/A	Comptroller or Federal Reserve (29)	Comptroller & Federal Reserve	N/A	N/A
N/A	N/A	FDIC or state authority (29)	FDIC & state authority	N/A	N/A
N/A	N/A	Federal Reserve	Federal Reserve	N/A	N/A
N/A	N/A	Federal Reserve & state authority	Federal Reserve	N/A	N/A
Federal Reserve (23)	FDIC (26)	Comptroller & Federal Reserve (27,30)	Comptroller	Federal Reserve & state authority	OCC or FTC
Federal Reserve (23)	FDIC (26)	FDIC, state authority & Federal Reserve (27,30)	Federal Reserve or FDIC & state authority	Federal Reserve & state authority	OCC or FTC & state authority

(18) The International Banking Act of 1978 makes foreign banks that have branches or agencies in the U.S. subject to the provisions of the Bank Holding Company Act of 1956 with respect to non-bank acquisitions. Acquisitions of banks are subject to the Bank Holding Company Act and the home state limitations imposed by the International Banking Act.

(19) The McFadden Act prevents interstate branching by national and state member banks.

(20) The Douglas Amendment to the Bank Holding Company Act allows bank holding companies to acquire banks in other states if the state of the acquired bank specifically allows out-of-state holding companies to acquire in state banks.

(21) Under the Depository Institutions Deregulation and Monetary Control Act of 1980, the Federal Reserve is required to set a uniform system of reserve requirements (Regulation D) for virtually all depository institutions. Non-insured state banks eligible for deposit insurance may be subject to reserve requirements. Regulation D provides that IBF deposits satisfying the requirements of that Regulation are exempt from reserve requirements.

(22) Deposits at foreign branches of U.S. banks payable only outside the U.S. are generally not subject to reserve requirements.

(23) Nearly all depository institutions in the U.S., including branches and

access to the discount window. These depository institutions are expected to make reasonable use of their usual sources of funds before requesting loans from Federal Reserve Banks. For example, savings associations and credit unions should first go to the Federal Home Loan Banks and the Central Liquidity Facility, respectively, for loans.

(24) Deposits which are not insured by the FDIC may be insured by states or state authorized insurance funds.

(25) Shares in all federal credit unions and many state credit unions are insured by the National Credit Union Share Insurance Fund, which is administered by the NCUA.

may be insured by state or state-authorized insurance funds.

(26) Federal branches of foreign banks which accept retail deposits generally must obtain FDIC insurance. State branches of foreign banks which accept retail deposits generally must also obtain FDIC insurance if they are located in a state in which a state bank is required to have deposit insurance.

(27) The FDIC has some residual examination authority over all FDIC-insured depository institutions.

(28) Federally insured Savings Associations are supervised and examined by the OTS; non-federally insured state Savings Associations by state authority.

by the OCC; foreign branches of state member banks by the Federal Reserve; foreign branches of insured state non-member banks by the FDIC; and foreign branches of non-insured state non-member banks by state authority.

(30) Federal branches and agencies are examined by the OCC; state branches insured by the FDIC are examined by the FDIC and state authority; and state non-insured branches and agencies are examined by state authority. The Federal Reserve has residual examining authority over all banking activities of foreign banks.

(31) Enforcement of federal consumer regulations is generally left to the FTC.

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

November 8, 1993

Honorable William J. Clinton
President of the United States
White House
Washington, D.C. 20500

Dear Mr. President:

In the preface to the "Report of the National Performance Review" you and the Vice-President state: "It is time to radically change the way government operates." We agree.

Let us state as clearly as we can that we strongly believe that the time is now for the full consolidation of the supervisory and regulatory responsibilities of the four bank and thrift regulatory agencies -- the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision -- into a single, independent Federal Banking Commission.

The current system is costly, burdensome, inefficient, archaic and must be re-engineered and modernized. We believe this issue must be addressed immediately and call upon you to exert bold leadership in this area as part of the Administration's ongoing effort to reinvent government.

Reforming our bank and financial regulatory bureaucracy is long overdue. Now is the time to address this issue head on. Banks and thrifts are posting record profits, and both the Congress and the Administration are committed to cost saving, deficit reduction, and a more efficient government.

Consolidation of the regulatory agencies is not a new idea. Virtually every independent study of our federal bank regulatory system since 1949 has recognized the need for major consolidation. Consolidation has been advocated by, among others, The Hoover Commission, the Hunt Commission, the FINE Study, the Grace Commission, the Task Group on Regulation of Financial Services, and the recently completed National Commission on Financial Institution Reform, Recovery, and Enforcement.

Most recently, on September 14, 1993, the Senate Banking Committee received testimony from a bi-partisan group of six former financial agency regulators. The witnesses were unanimous and unequivocal that major consolidation would benefit consumers; benefit industry; and improve the safety and soundness of the financial services industry. For the banking industry, consolidation holds the promise of reduced examination fees and an end to duplicative examinations and conflicting regulations. For the general public, regulatory consolidation means a more accountable, more responsive bank regulatory system. And for the American economy, regulatory consolidation means a more vital, more competitive banking system.

We believe that a streamlined regulatory system will allow America's banks to put more effort into productive business activities and less into coping with their regulators. We also believe that the consolidation and streamlining of our supervisory and regulatory system into a single Federal Banking Commission will do much to reduce the paperwork burden facing the industry while at the same time increasing the safety and soundness of the system.

Mr. President, full consolidation of the supervisory and regulatory responsibilities of all four of our bank and thrift regulatory agencies is a top priority for us in this Congress. We look forward to working closely with you and your Administration on this issue. Given the similarity of approaches contained in the bills we have introduced in the House and Senate, we urge your Administration to seize this unique and historic opportunity to fundamentally improve the way our bank and thrift regulatory agencies operate and to reinvent and re-engineer this area of our government in a major, meaningful way.

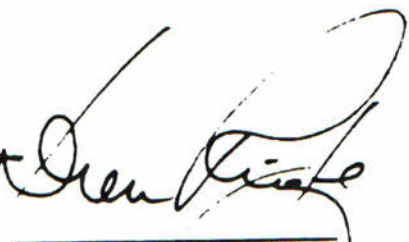
Sincerely,



Henry B. Gonzalez
Chairman
House Banking Committee



Alfonse M. D'Amato
Ranking Member
Senate Banking Committee



Donald W. Riegle, Jr.
Chairman
Senate Banking Committee

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INTRODUCTION OF THE REGULATORY CONSOLIDATION ACT OF 1993

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 4, 1993

Mr. GONZALEZ. Mr. Speaker, today I introduce the Regulatory Consolidation Act of 1993, H.R. 1214. This act consolidates all the Federal bank and thrift regulatory functions into a single, independent commission.

Mr. Speaker, the current Federal regulatory structure for banks and thrifts is horribly scattered and disjointed. National banks are regulated by the Office of the Comptroller of the Currency. Savings associations are regulated by the Office of Thrift Supervision. The Federal Reserve regulates bank holding companies, foreign banks, and State banks that are members of the Federal Reserve System and, at the same time, is charged with carrying out the Nation's monetary policy. The Federal Deposit Insurance Corporation regulates State banks that are not members of the Federal Reserve System and insures all banks and savings associations.

You should not be surprised to learn that the current patchwork system was not created as part of any cohesive regulatory plan. The OCC was created to help finance the Civil War, the Federal Reserve was established 60 years later as the Nation's central bank to administer monetary policy, the FDIC was established still later as an insurer—not a regulator, and the predecessor of the OTS was created to provide long-term, low cost funds to thrifts.

This disjointed and haphazard approach to Federal regulation has proven to be duplicative, inefficient, and expensive. The Comptroller General recently presented the Banking Committee with a highly critical review of the bank and thrift examination process, testifying that, "[E]xamination weaknesses are symptomatic of a regulatory structure that is not as effective and efficient as it should be in

overseeing our depository institutions." The General Accounting Office report highlighted the inconsistencies in the quality and comprehensiveness of examinations among the regulatory agencies.

The savings and loan debacle illustrates the cost to the taxpayers of our current regulatory system. The banks and savings associations also pay for this duplicative and inefficient system. A bank holding company with national bank, State bank, and savings association subsidiaries undergoes OCC, Federal Reserve, OTS, and State examinations annually. Even Comptroller Bowsher, no fan of loosening regulation, noted that, "[O]ne of the things that drives these bankers nuts is the inconsistency and the arbitrariness that they see from the different banking agencies that come in to look at them." This legislation remedies the uncoordinated regulatory burden and its attendant costs imposed upon our insured depository institutions.

The Regulatory Consolidation Act of 1993 creates a Federal Banking Commission. All regulatory functions of the OCC, OTS, FDIC, and Federal Reserve are transferred to the Commission. The Federal Reserve is free to focus solely on monetary policy and the FDIC administers the Federal deposit insurance funds. The OCC and OTS are abolished. The current system of regulation and insurance of credit unions remains unchanged.

Some argue that the Federal Reserve needs to retain some regulatory functions. A plan floated by the last administration would have large bank holding companies with the Federal Reserve; others propose having the Fed continue to regulate foreign banks. I believe that the Federal Reserve should concentrate on monetary policy only and will explore, through hearings, whether any bank or bank holding company regulatory powers are needed to carry out its monetary policy mission.

The new Commission will consist of seven members: the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Board of Directors of the FDIC, and four public members, one of which would be the Chairman, appointed by the President with the advice and consent of the Senate. At least one Presidentially appointed commissioner must have had at least 2 years experience representing consumer or community interests on banking services, credit needs or housing and consumer financial protection.

I believe this arrangement strikes the appropriate balance between independence and executive branch control of bank regulation. Independence is vital—previous administrations to politicize regulation in order to promote their economic policy contributed greatly to the savings and loan crisis and a near tragic laxity in bank and thrift examination and supervision.

On the other hand, the executive branch has a strong interest in promoting a healthy and viable banking industry. Critical aspects of any administration's economic policy depend to a great degree on a safe and sound banking industry. Placing the Secretary of the Treasury on the Commission will provide the administration with an avenue to express its views. The institutionalized relationship between the independent regulator and the Treasury Department of the sort envisioned in my legislation is superior to the current system where the Treasury Department is charged with running the OCC and the OTS and influences the Federal Reserve and the FDIC through back room winks and nods.

The Regulatory Consolidation Act establishes a consumer division within the Commission to supervise and enforce consumer protection laws, including the Community Reinvestment Act. The consumer division recognizes that consumer protections, including availability of banking services and credit, are as important as safety and soundness. Insured depository institutions are required to meet the convenience and needs of the community they serve. The consumer division is designed to monitor institutions' performance under that test.

I am heartened by the number of my Banking Committee colleagues that have joined me as original cosponsors of the Regulatory Consolidation Act of 1993—Mr. VENTO, Mr. FRANK, Mr. KENNEDY, Mr. FLAKE, Mr. MURPHY, Ms. WATERS, Mr. GUTIERREZ, Mr. RUSH, Ms. ROYBAL-ALLARD, Ms. VELAZQUEZ, and Mr. HINCHAY. I wrote to President Clinton in late January urging him to support regulatory consolidation and pledging to work with his administration towards that goal. I am pleased to report that the initial response of the administration is a positive one. President Clinton's report, "A Vision of Change for America" states that, "The Federal Government is more complex than it needs to be. Often, many different agencies deal with the same issue, and individuals, businesses, communities, and States find it impossible to have their problems addressed. Departments and agencies are already consolidating and simplifying their operations, and the administration will seek to rationalize and streamline functions Government-wide."

The massive job of regulating an increasingly complex financial community requires the full-time effort of an independent and thoroughly coordinated commission. Otherwise, we are setting the Nation up for another costly regulatory failure that may make the savings and loan disaster look like a walk in the park, and in the meanwhile, loading needless and excessive burdens on the banking system.

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PROCEEDINGS AND DEBATES OF THE 103^d CONGRESS, FIRST SESSION

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third, the need to reduce unnecessary regulatory compliance costs on the industry wherever possible without sacrificing safety and soundness.

Our bill would combine the supervisory and regulatory functions of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision into a single Federal Banking Commission.

AMERICA'S FLAWED BANK REGULATORY SYSTEM

Today, we have four entirely separate Federal banking agencies. Each has its own squad of examiners, its own bureaucracy, and its own regulations. No thoughtful person would ever design such a system from scratch. In fact, nobody planned our present bank regulatory system—it's a product of historical accident.

America's bank regulatory system evolved as a reaction to crisis. Running short of money to fund the Civil War, Congress created the Office of the Comptroller of the Currency to facilitate war financing efforts in 1863. In 1913, Congress established the Federal Reserve System to stabilize the industry after a series of banking panics. In 1933, Congress created the FDIC to introduce a system of Federal deposit insurance and restore confidence in our financial system after hundreds of bank failures. And the Office of Thrift Supervision also had its roots in the Depression, only to be transformed into its present form after the savings and loan crisis.

This piecemeal regulatory system is clearly out of date and in critical need of overhaul. It generates needless expense and endless confusion for America's banks and thrifts. Money that the banking industry could make available for lending to its customers is spent instead to support well-intentioned—but only marginally successful—efforts at complying with multiple agency mandates.

In fact, our current bank regulatory system has virtually no defenders outside the regulatory agencies themselves. As former FDIC Chairman William Seidman recently acknowledged:

The financial institutions regulatory system is complex, inefficient, outmoded and archaic. It needs to be reformed with a single independent federal regulator. (Do not bother to ask regulators about it; their turf is their only message.)"

TESTIMONY OF EX-REGULATORS AND EXPERTS

On September 14, 1993, the Senate Banking Committee received testimony from a bipartisan group of six former financial regulators, together with former Senate Banking Committee Chairman William Proxmire and current House Banking Committee Chairman HENRY B. GONZALEZ.

The group was unanimous and unequivocal in its view that the current system is costly, burdensome, inefficient, archaic and the time has come for it to be re-engineered and modernized.

Our witnesses were also unanimous and unequivocal on the following issues:

Major consolidation would benefit consumers;

Major consolidation would benefit the industry;

Major consolidation would improve the safety and soundness of the financial services industry; and

Reforming our bank and regulatory bureaucracy is long overdue and now is the time to address the need for major consolidation. We have a new administration committed to change. Banks and thrifts are posting record profits, and both the Congress and the administration are committed to cost-saving, deficit reduction and a more efficient government. This issue must be addressed in the administration's ongoing efforts to reinvent Government.

As I have said, these views were shared by every single one of our witnesses. Here are some brief excerpts of what each had to say about the current bank regulatory system:

William Proxmire, chairman of the Senate Committee on Banking, Housing and Urban Affairs from 1975 to 1980 and 1987 to 1989:

We have the most bizarre, entangled regulatory system in the world. It never ceases to amaze me that it has lasted this long.

*** I should like to add the recommendation that at an absolute minimum the Congress consolidate the bank regulatory functions of the Comptroller of the Currency, the Federal Reserve Board and the FDIC in a single agency *** (The minimum consolidation of bank regulation should also include the bank regulating functions of these three agencies and the Office of Thrift Supervision.

HENRY B. GONZALEZ, current chairman of the House Committee on Banking, Finance and Urban Affairs:

Our current system of regulation operates like a Hydra-headed monster, with its many heads flailing around, each with a mind of its own and indifferent to the activities of the other. Certainly, no rational person would have ever designed such a system for regulating the nation's banks and thrifts.

Consolidation of the regulatory functions (OCC, Federal Reserve, FDIC and OTS) into a single, independent regulator would result in many benefits.

L. William Seidman, chairman of the Federal Deposit Insurance Corporation from 1985 to 1991:

If one wants to talk about "reinventing government", one doesn't have to be a Thomas Edison to recognize that this is an obvious place to start *** regulatory restructuring is necessary for the following reasons: to simplify the system and make its regulations uniform; to make it more effective and efficient; to make it operate on a timely basis; to make our financial system more competitive; and to reduce frustration and the resultant consumption of stomach pills.

John G. Heimann, Comptroller of the Currency from 1977 to 1981:

I first testified in favor of reorganizing the banking supervisory structure in 1975 and, since that time, have consistently argued for banking agency consolidation both while I was in government service and after my return to the private sector. My view as to the

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. RIEGLE (for himself and Mr. D'AMATO):

S. 1633. A bill to consolidate under a new Federal Banking Commission the supervision of all depository institutions insured under the Federal Deposit Insurance Act, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

REGULATORY CONSOLIDATION ACT OF 1993

• Mr. RIEGLE. Mr. President, I rise to introduce the Regulatory Consolidation Act of 1993 together with the ranking Republican on the Senate Banking, Housing, and Urban Affairs Committee, Senator ALFONSE D'AMATO. This legislation addresses three important needs in America's financial regulatory system: First, the need to modernize and streamline the outdated anachronistic system under which the Nation's banking and thrift institutions currently must operate; second, the need to increase the effectiveness of Federal Government oversight of depository institutions by integrating responsibility for Federal supervision and examination in a single regulatory body; and

wisdom of consolidation remains the same some 18 years later. The system we have today is archaic, expensive, duplicative and inefficient. The costs are unnecessarily burdensome. Directly and indirectly, they are borne by the consumer and the shareholder. They can be meaningfully reduced without harmful consequences. In fact, I would argue that consolidation would improve the system of banking supervision at less cost.

We should create a Federal Banking Commission (F.B.C.) which would envelop the present bank supervisory activities of the OCC, OTS, FDIC, FRB and the National Credit Union Administration (N.C.U.A.).

H. Joe Selby, Executive Vice President and Director of Regulatory Affairs at the Federal Home Loan Bank of Dallas from 1986 to 1988; Senior Deputy Comptroller of the Currency from 1975 to 1988; and Acting Comptroller of the Currency in 1985:

The present regulatory apparatus is outdated and outmoded. Created in response to financial crises, and to the introduction of new financial products, it has been rendered inefficient and ineffective in many respects by the rapid changes in the financial system.

Multiple federal agencies with overlapping responsibilities only promote duplication, inconsistency and inefficiency.

Responsibility for regulation and supervision of all federally insured depository institutions and holding companies should be vested in a single, federal financial institution supervisory agency.

Andrew F. Brimmer, member of the board of governors of the Federal Reserve System from 1966 to 1974:

... Uneven bank examination standards—growing out of our fragmented Federal Bank Regulatory Apparatus—contributed to the severe credit crunch of 1990-91 and aggravated the recession which occurred in those years.

The Federal Bank Regulatory structure should be revamped. The Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration should all be abolished.

Richard C. Breeden, Chairman of the Securities and Exchange Commission from 1989-93; Deputy Counsel to the Vice-President and Staff Director of the Task Group on Regulation of Financial Services from 1982-85:

Our current bank regulatory system is simply too big, too costly, and too inefficient. At a time when we face extremely difficult and painful choices as a nation regarding resource allocation and government spending priorities, it is surprising that the bank regulatory system has remained seemingly immune to reductions in overcapacity and elimination or privatization of unnecessary functions. Indeed, the total employment of the depository regulatory agencies in the U.S. is over 40,000 persons. This exceeds the size of several NATO armies, and it is more than 15 times greater than the total employment of the SEC, even though the SEC oversees approximately the same number of entities of different types with aggregate assets at least double all the deposits of banks and thrifts in the U.S.

It would be a substantial improvement from the status quo if each banking company could have a single regulator (rather than 2 or 3). Of course, total consolidation of the bank and thrift agencies would allow substantial cost-savings through the elimination of redundant facilities, staff and other overhead.

Today's bank regulatory system is so costly that it is creating a major threat to the competitiveness of commercial banks, and thereby undercutting to some degree the objectives the system is designed to achieve.

Timothy Ryan, Director of the Office of Thrift Supervision from 1990-92:

There is only one word to describe all this. That word is gridlock. No one creating a regulatory system today would design such a mechanism.

Government has the opportunity to make the regulatory world over again not for regulation's sake, but for America's safety and competitiveness. Regulatory agency restructuring has been studied for years. Almost every report issued over the last three decades has recognized the need for and benefits of consolidation.

What is the best structure? Simply stated, I believe that all bank and thrift regulatory activities should be consolidated into one agency. This agency should have all of the authority that today is vested in the multiple agencies. I know this proposal will raise turf issues. That debate, however, is not worth the time or energy.

Consolidation makes sense and could be easily implemented over a two year period. Now, it's time to "just do it".

THE NEED FOR REFORM

The fact that we have just emerged from America's greatest financial crisis since the Great Depression makes this an especially good time for Congress to look at regulatory consolidation. First, we learned the hard way of the enormous price that America's taxpayers and financial institutions are forced to pay by inefficient regulation. And second, for the first time in several years we can look at important administrative issues like regulatory restructuring outside of a crisis environment.

America needs a more rational, modern bank regulatory system. The current system is needlessly complex. The Banking Committee also held hearings in 1991 on several regulatory restructuring proposals. We discovered at least three major problems with the existing regulatory structure.

Lack of independence: Like monetary policy, bank regulation should be separated from political influence. Bank regulatory policy should be decided on its virtue and not by the direction of blowing political winds. In his testimony before the Banking Committee, Steve Roberts, a former aide to Fed Chairman Paul Volcker, gave his rationale for an independent banking regulator this way:

Independent agencies are able to function well for several reasons: they tend to have a continuity of leadership, they have a continuity of mission and purpose with dedicated professional staffs, and a clear mandate. Regulatory agencies that are parts of government departments normally lack such continuity and are generally headed by an individual who has great influence on the staff, the bureau's approach to its mission and objectives, and its approach to regulation and supervision.

Regulator delays: By fragmenting authority, the current system impedes timely decisionmaking because of internal squabbling among the banking agencies, and hinders efforts to make

needed changes in the banking regulations. As former Senator William Proxmire said in testimony before the Banking Committee:

Our banking and financial system is undergoing rapid technological change where new and complex practices are introduced almost daily. Bank regulators cannot possibly stay on top of this constantly changing financial system if they must spend most of their time fighting turf wars.

Unhealthy competition among regulators: In recent years the heads of the four Federal bank regulatory agencies have all testified in favor of meaningful consolidation of the agencies, and indeed the agencies have made limited progress in carrying out their responsibilities in a properly coordinated manner. Nevertheless, the overlapping jurisdiction in the present regulatory structure continues to foster unhealthy competition among the agencies.

Just last week on October 30, The Washington Post carried a story about the proposal of the Nation's eighth largest banking organization, Wells Fargo, to trade its bank charter for a savings and loan charter in order to take advantage of less restrictive rules on interstate branching and permissible activities. The story went on to note that the proposal would have put Federal regulators on the spot and was dropped because it might be too controversial.

As Fed Chairman Arthur Burns stated in the early 1970's:

The present system is conducive to subtle competition among the regulatory authorities, sometimes to relax constraints, sometimes to delay corrective measures.

Wolfgang Reinicke of the Brookings Institution, testifying in 1991 before the Banking Committee agreed:

The fewer the number of Government agencies, the lesser the regulatory overlap and the lower the chance that short-term institutional competition will override long-term public policy.

Regulatory consolidation is not a new or radical idea. The need to merge the Federal bank regulatory agencies has been widely acknowledged for decades. In 1949, the Hoover Commission was the first of a series of high-level commissions to recommend consolidation of the bank regulatory apparatus. In 1962, the Commission on Money and Credit did the same. In the mid-1970's, my predecessor, Chairman Proxmire, held hearings on regulatory consolidation and introduced legislation on three occasions. In the early 1980's, the Reagan administration embraced regulatory consolidation as a cost-saving measure. And the Bush administration included a stripped-down regulatory consolidation proposal in the initial legislative package sent to Congress in 1991—the package that ultimately became FDICIA. So I want to be the first to acknowledge that this bill has many ancestors.

John Sandner, the chairman of the Chicago Mercantile Exchange, earlier this year outlined his own regulatory

consolidation proposal. At a news conference, Mr. Sandner called the current Federal system of financial regulation "an expensive morass of duplication and inefficiency." And just recently in an interview with the American Banker, David Mullins, the vice chairman of the Federal Reserve Board, also called for a more rational Federal bank regulatory system, saying "there's no question that we need to move to a more streamlined system." He declared the current structure "costly and cumbersome and tending not to lead to decisive actions when needed."

I completely agree with Mr. Sandner and Mr. Mullins. Reform of our regulatory system is long overdue.

It will be a tough fight, however. In testimony before the Banking Committee in 1991, Senator Proxmire warned of the difficulties facing his earlier consolidation proposals (which did not include the thrift regulator):

I seriously underestimated the depth of the entrenched opposition to regulatory consolidation. All three bank regulatory agencies vehemently opposed the legislation. Privately, however, each agency let it be known it would withdraw its objections if it could assume the powers of the other two.

Therefore, it's important to recognize that regulatory consolidation will serve many vital interests beyond those of the banking agencies:

For taxpayers, regulatory consolidation means more effective Federal supervision and examination of depository institutions, which translates into better protection against the risk that taxpayer funds will ever again need to be called on because losses outstrip Federal deposit insurance funds.

For bank and thrift customers and the general public, regulatory consolidation means a more accountable, more responsive bank regulatory system. Citizens will no longer have to guess which faceless agency is responsible for the particular institution they bank with. Whether it's a bank or a thrift, they'll know that the Federal Banking Commission is the place to turn if there's a problem.

For the American economy, regulatory consolidation means more efficient government and a more vital, cost-effective, and competitive banking system. No other country hobbles its financial system with so many bank regulators. With a streamlined regulatory system, our financial institutions will be able to put more effort into their business and less into coping with their regulators.

For the banking industry, consolidation holds the promise of a more rational system of Federal oversight, with substantially reduced examination and supervision fees, less frequent and less intrusive examinations, and reduced need to sort out inconsistent and even conflicting regulatory guidance.

KEY PROVISIONS OF THIS BILL

Let me now briefly describe how the bill I am introducing today would re-

form America's bank regulatory system.

The bill would establish a five-member Federal Banking Commission to supervise and regulate all FDIC-insured depository institutions. Although the Commission would be an independent agency, its members would include both the Secretary of the Treasury—or the Secretary's designee—and a member of the Federal Reserve Board. Three independent Commissioners appointed for staggered 6-year terms would also serve on the Commission. The President would designate one of these independent Commissioners to serve as Chairman of the Commission and another to serve as Vice Chairman.

I believe this structure provides both the administration and the Federal Reserve Board with the information and oversight they need with regard to bank regulation while simultaneously fulfilling the vital need for political independence in financial regulation.

The Commission would assume the regulatory and supervisory functions currently exercised by the Comptroller of the Currency with respect to national banks; the Federal Reserve Board over bank holding companies and State-chartered banks that belong to the Federal Reserve System; the FDIC with respect to other State-chartered banks; and the Office of Thrift Supervision with respect to savings associations and savings association holding companies. The FDIC, as deposit insurer, would retain its existing backup enforcement authority. The Federal Reserve would retain all of its central bank monetary policy, lender of last resort, and payment system responsibilities and would have access, through the Federal Banking Commission, to all the information and resources it needs to deal with potential systemic risk issues. I should point out that there are many powerful central banks around the world. As one of our witnesses pointed out, the German Bundesbank is notably among them and it is not only a powerful and effective central bank but it spends 100 percent of its time worrying about monetary policy and the value of the currency. Regulation and insurance of credit unions would remain exactly as they are today.

The bill would require the consolidation of regulatory functions to occur on a date set by the Secretary of the Treasury. The goal would be to achieve consolidation within 10 months after the bill becomes law, but the Secretary would have discretion to extend the period by an additional 5 months. To facilitate a timely and orderly consolidation, the act would urge the President to nominate the initial group of appointed Commissioners at least 3 months before the consolidation date, and urge the Senate Banking Committee to act on those nominations at least 45 days before that date.

Finally, the bill would also reform the Board of the FDIC to reflect the abolition of the Office of the Comptrol-

ler of the Currency and the Office of Thrift Supervision by giving both the Secretary of the Treasury—or the Secretary's designee—and the Chairman of the Federal Banking Commission seats on the FDIC Board.

Those are the essential provisions of this bill. Let me state as clearly as I can that I believe strongly that the time is now for full consolidation of the supervisory responsibilities of the four agencies—any alternative that doesn't go this far would simply result in another kind of regulatory hodgepodge. On other details of my bill I have an open mind. I therefore view this bill as an important first step—the central tenet of my view of what can best provide constructive solutions to the regulatory burden problem and to become the foundation of a meaningful discussion of a much-needed, modern bank regulatory structure for the future.

CONCLUSION

The bill I am offering today can go a great distance toward relieving the regulatory burdens many bankers are feeling, improving the efficiency and effectiveness of regulation, and placing America's financial system on a sound regulatory footing for generations ahead. I urge my colleagues to consider it carefully and lend it their support. I urge the administration to seize this unique moment of opportunity to reinvent and reengineer Government in a major, meaningful way.

Mr. President, I ask unanimous consent to have additional material placed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS,
Washington, DC, November 8, 1993.

HON. WILLIAM J. CLINTON,
President of the United States,
White House, Washington, DC.

DEAR MR. PRESIDENT: In the preface to the "Report of the National Performance Review" you and the Vice-President state: "It is time to radically change the way government operates." We agree.

Let us state as clearly as we can that we strongly believe that the time is now for the full consolidation of the supervisory and regulatory responsibilities of the four bank and thrift regulatory agencies—the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision—into a single, independent Federal Banking Commission.

The current system is costly, burdensome, inefficient, archaic and must be re-engineered and modernized. We believe this issue must be addressed immediately and call upon you to exert bold leadership in this area as part of the Administration's ongoing effort to reinvent government.

Reforming our bank and financial regulatory bureaucracy is long overdue. Now is the time to address this issue head on. Banks and thrifts are posting record profits, and both the Congress and the Administration are committed to cost saving, deficit reduction, and a more efficient government.

Consolidation of the regulatory agencies is not a new idea. Virtually every independent

study of our federal bank regulatory system since 1949 has recognized the need for major consolidation. Consolidation has been advocated by, among others, The Hoover Commission, the Hunt Commission, the FINE Study, the Grace Commission, the Task Group on Regulation of Financial Services, and the recently completed National Commission on Financial Institution Reform, Recovery, and Enforcement.

Most recently, on September 14, 1993, the Senate Banking Committee received testimony from a bi-partisan group of six former financial agency regulators. The witnesses were unanimous and unequivocal that major consolidation would benefit consumers; benefit industry; and improve the safety and soundness of the financial services industry. For the banking industry, consolidation holds the promise of reduced examination fees and an end to duplicative examinations and conflicting regulations. For the general public, regulatory consolidation means a more accountable, more responsive bank regulatory system. And for the American economy, regulatory consolidation means a more vital, more competitive banking system.

We believe that a streamlined regulatory system will allow America's banks to put more effort into productive business activities and less into coping with their regulators. We also believe that the consolidation and streamlining of our supervisory and regulatory system into a single Federal Banking Commission will do much to reduce the paperwork burden facing the industry while at the same time increasing the safety and soundness of the system.

Mr. President, full consolidation of the supervisory and regulatory responsibilities of all four of our bank and thrift regulatory agencies is a top priority for us in this Congress. We look forward to working closely with you and your Administration on this issue. Given the similarity of approaches contained in the bills we have introduced in the House and Senate, we urge your administration to seize this unique and historic opportunity to fundamentally improve the way our bank and thrift regulatory agencies operate and to reinvent and re-engineer this area of our government in a major, meaningful way.

Sincerely,
HENRY B. GONZALES,

*Chairman,
House Banking Committee.*

ALPONSE M. D'AMATO,
*Ranking Member,
Senate Banking Committee.*

DONALD W. RIEGLE, JR.,
*Chairman,
Senate Banking Committee.*

REGULATORY CONSOLIDATION ACT OF 1993

The Act would establish a 5-member Federal Banking Commission, consisting of:

The Secretary of the Treasury (or the Secretary's designee);

A member of the Federal Reserve Board, chosen by the Board; and

Three commissioners appointed for staggered 6-year terms.

The Commission—an independent agency—would supervise and regulate all FDIC-insured depository institutions and their holding companies and other affiliates.

The Commission would thus have all the depository institution regulatory functions currently exercised by:

The Comptroller of the Currency (national banks);

The Federal Reserve Board (bank holding companies and State member banks);

The FDIC (State nonmember banks); and
The Director of the Office of Thrift Supervision (thrifts and thrift holding companies).

The FDIC would, as deposit insurer, retain its existing back-up enforcement authority.

The consolidation of regulatory functions occur on a date set by the Secretary of the Treasury. The goal would be to achieve consolidation within 10 months after the bill becomes law, but the Secretary would have discretion to allow an additional 5 months.

To facilitate a timely and orderly consolidation, the Act would urge the President to nominate the initial group of appointed commissioners at least 3 months before the consolidation date, and urge the Senate Banking Committee to act on those nominations at least 45 days before that date.

The President would, subject to Senate confirmation, designate one of the 3 appointed commissioners as Chairperson and the other as Vice Chairperson.

The bill would not specifically require that the Federal Banking Commission have a separate Consumer Division or that one of the commissioners have a consumer-advocacy background.

The Secretary of the Treasury (or the Secretary's designee) and the Chairperson of the Federal Banking Commission would sit on the FDIC's 5-member Board of Directors, in place of the Comptroller of the Currency and the Director of the Office of Thrift Supervision.

Mr. D'AMATO. Mr. President, I am pleased to join Senator RIEGLE, the distinguished chairman of the Senate Committee on Banking, Housing, and Urban Affairs, in introducing the Regulatory Consolidation Act of 1993. Before explaining the importance and purpose of the legislation, I want to acknowledge his determination and outstanding leadership in formulating a bipartisan and coherent legislative approach to modernizing and rationalizing the regulation of financial institutions.

Mr. President, the bill we are introducing today would consolidate into a single, independent Federal Bank Commission the supervisory and regulatory functions currently scattered among the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision. The Federal Bank Commission would assume the regulatory and supervisory functions of the Comptroller of the Currency over national banks; the Federal Reserve Board over bank holding companies and State-chartered banks that belong to the Federal Reserve System; the Fed with respect to other State-chartered banks; and the Office of Thrift Supervision concerning savings associations and their holding companies. The FDIC would retain back-up enforcement authority in its capacity as insurer. The Fed would continue its historical and critical roles as central bank and lender of last resort. The bill would not address or change the present regulation and insurance of credit unions.

Mr. President, several weeks ago amidst great fanfare the administration released the "National Performance Review" containing many recommendations for reinventing Government. The report proposes to streamline, decentralize, reorient and even eliminate agencies and programs in order to create a more responsive, ef-

fective and efficient Government. But the report conspicuously avoids any attempt to achieve these laudable goals in the context of the bank regulatory structure. This must be an oversight or a subject still under review within the administration because it has been proposed—but not accomplished—by independent commissions, think tanks and prominent experts since the late 1930's.

Mr. President, the Regulatory Consolidation Act of 1993 would, in the words of Vice President GORE, move our bank regulatory system from "red-tape to results ***". With the administration's support, and building upon the bipartisan enthusiasm for consolidation in the House and Senate, an independent Federal Bank Commission can be established in this Congress. I urge the administration witnesses to support the bill when they testify before the committee later this month.

Mr. President, the regulatory system for depository institutions has developed more by accident than by design. Bank executives have expressed frustration over what they have called a "revolving door of examiners." And among the most notable causes of the credit crunch is the burdensome, confusing, and costly regulation that has resulted from the present labyrinthine framework of overlapping and uncoordinated examinations, duplicative reports, and differing and inconsistent interpretations. The current system of regulation is archaic, cumbersome, costly and confusing to both the regulated and the regulators.

Mr. President, I want to emphasize that this legislation addresses only regulatory structure and not the substance of the regulation. The committee recognizes the need to update bank and thrift regulation, mitigate the unintended or unnecessary consequences of particular regulations, and increase the ability of banks and thrifts to make money and credit available to the economy. In the near future, the Senate will consider S. 1275, the "Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993" to address these concerns. The purpose of this bill is to recognize and consolidate the four regulatory agencies into a Federal Bank Commission, and it is entirely consistent with the committee's overall approach to simplifying and streamlining regulation while strengthening the banking system. Mr. President, Chairman RIEGLE and I intend to make regulatory consolidation a priority for our committee. I have pledged to fully support and cooperate in this effort. We are both committed to the passage of legislation by the end of this Congress. Although this is an ambitious goal, especially in light of the fate of similar efforts in the past, I urge my colleagues to capitalize on this opportunity to reinvent and reorganize the bank regulatory structure.

Mr. President, I congratulate the chairman again for offering an excellent way to reduce overregulation and

November 8, 1993

CONGRESSIONAL RECORD—SENATE

S 15325

streamline the regulatory structure for depository institutions. Enacting this legislation will provide for significant paperwork reduction, regulatory burden relief and contribute to economic growth while increasing the safety and soundness of the financial system. I urge our colleagues to join us in achieving a comprehensible system of regulation for depository institutions.•

Lloyd Bentsen

The Bank Regulation Jumble

The United States has a bank regulatory system cobbled together over the past 130 years into a device even Rube Goldberg would marvel at. It is decades out of date. It is a drag on the economy, a headache for our financial services industry and a source of friction within our government. It must be replaced, and we have concluded that the best way to do that is to consolidate the scattered regulatory operations into a single agency.

This will make a significant contribution to our goal of creating a government that allows our economy to function more efficiently and one that makes us more productive and competitive.

I agree with leaders of the Senate and House Banking committees that no sane person would have deliberately set out to create a system where the lines of responsibility and jurisdiction look like a spider's web. It leads to conflict between agencies, forum-shopping by institutions, confusing and conflicting interpretations of regulations, inconsistent protection for consumers and duplication we cannot afford.

Look at what we have now. Four federal entities each supervise in some fashion our banks and thrifts. The Comptroller of the Currency (OCC) regulates national banks. The Federal Reserve Board, while its primary responsibility is monetary policy, also regulates bank holding companies, some state-chartered banks and foreign banks. The Federal Deposit Insurance Corporation (FDIC), which insures deposits, regulates state-chartered banks that do not belong to the Federal Reserve system. And the Office of Thrift Supervision (OTS) regulates thrift holding companies and supervises both federal and state-chartered savings associations.

The existing system reflects a time when each type of institution—commercial banks, savings banks and thrifts—operated largely in its own narrow market segment. But that time is gone. The lines are blurring. It is a time now of computer banking from home, of plastic cards that let you withdraw cash from machines, pay bills and transfer funds, and of writing "checks" on accounts at investment houses.

The business has changed, but the government has not kept up. In fact, we've gotten in the way. Not long ago we heard

We need to consolidate the four existing agencies into one Federal Banking Commission.

reports of how regulators from different agencies were examining a small bank in California. The examiners outnumbered the bank's employees, and their cars filled the parking lot so customers could not park to do business. "Overkill" and "ludicrous" are the words that come to mind.

As part of reinventing government, we propose to restructure the country's financial oversight system around three basic tasks: supervision and regulation, insuring deposits and operating a central bank.

We propose consolidating the supervisory and regulatory functions of all four existing agencies into a single Federal Banking Commission. That will streamline the regulatory process and contribute to our goal of ensuring the safety and security of our banks and thrifts. Our proposal also preserves the right of states to act as the primary supervisors of banks they charter.

Under our plan, the FDIC would continue its historical role of insuring deposits at all federally insured banks and thrifts. It would resolve failed or failing institutions.

And as our central bank, the Federal Reserve would continue to conduct monetary policy, operate the system that physically and electronically moves money throughout the nation, and lend banks the money needed to meet unexpected demands for cash. It also would continue to set standards for and examine activities related to the movement of money. Our proposal does not affect the Fed's independence in performing its basic functions.

Part of this administration's mandate is to make this nation's economy function more smoothly. So far as financial services are concerned, you do this by eliminating a confusing and duplicative regulatory structure to improve efficiency and decision-making.

By way of example, consider a banking company that includes a state-chartered bank, a national bank and a thrift. All four existing federal agencies supervise its operations. Imagine the problems and frustrations the directors can face in trying to make decisions when four different agencies offer conflicting reports and advice—and on differing time schedules. Imagine trying to get different regulators to approve a new activity in a timely fashion.

The administration plan, which resembles some excellent proposals offered on Capitol Hill, will create certainty about regulatory issues and will end duplicative supervision. The net result will be that our financial institutions will be better positioned to compete in the global marketplace.

Not only will these institutions benefit; consumers stand to gain as well, as the cost of regulation falls, easing the cost of doing business. Consumers will also see a uniform application of consumer protection laws. In addition, it will be clear who regulates their banks and where to complain if there is a problem.

The new organization will need the talents of the dedicated regulatory staffs at the OCC, Federal Reserve, FDIC and OTS. They have done a first-rate job in a system that has grown needlessly complex. I expect them to be able to do even better in the new Federal Banking Commission. With their help, I believe we can accomplish this transition within a year of the legislation's enactment.

The writer is secretary of the Treasury.

THE WHITE HOUSE
WASHINGTON

October 8, 1993

MEMORANDUM FOR THE PRESIDENT

FROM:

ROBERT E. RUBIN *ER*

SUBJECT:

Treasury's Bank Policy Memo

*Very good
Q. in reply to
A's decision
to*

The attached memorandum is in response to the conversation you, George and I had with respect to the effectiveness of your credit crunch policy, the possibility of changing the Basle agreement on reserve requirements, and an FDIC appointment.

As the memorandum states, Treasury needs your guidance on several important banking issues for Congressional testimony over the next couple of months. Certain of the issues on which Treasury provides recommendations are quite controversial, and I would suggest that this memo be used as the basis for a well-organized discussion with you of the pros and cons relating to those issues.

Please let us know if you agree.

Attachment

→ C. J. M.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

10/7/93 P5:22

SECRETARY OF THE TREASURY

October 7, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD BENTSEN

SUBJECT: Banking Policy

Attached is a memo prepared by Frank Newman and Gene Ludwig in response to your expression of interest in a range of banking issues. I believe the memo provides excellent background on a number of important matters that bear on the overall economy, as well as the banking system. I have worked with Frank, Gene, and Roger Altman on these issues, and support the recommendations. Frank and Gene have also worked closely with others in the Administration, particularly NEC and OMB, and the memo reflects a largely shared view of policy direction.

I believe it is important for our Administration to have such a comprehensive approach to banking system issues, and to state it publicly and carefully. The U.S. banking system is facing secular decline, with enormous potential implications for the economy. We have the opportunity to take actions to strengthen the system while simultaneously delivering benefits to a broad range of consumers and businesses. The approach described in the memo should expand productive lending, help distressed communities, increase U.S. competitiveness internationally, and improve the financial condition of the industry.

The memo also provides background and an opportunity to settle on an appropriate nominee for Chairperson of the FDIC, the last especially important financial system appointment remaining to be filled.

I understand that Bob Rubin will be arranging a time soon for Frank, Gene, Bob, Roger and me to meet with you on these issues, and we all look forward to discussing them with you.

Attachment

cc: Bob Rubin

M E M O R A N D U M

To: The President

From: Frank Newman, Gene Ludwig *hjl*
fan

Re: Credit Availability and Other Banking Policy Matters

CC: Vice President Gore, Lloyd Bentsen, Bob Rubin, Roger Altman, Chris Edley, Ellen Seidman, Joe Stiglitz, Howard Paster

Date: October 6, 1993

This memorandum responds to Bob Rubin's request that we briefly outline for you (1) broadly, what we propose as the architecture of Clinton Administration depository institutions policy; (2) the progress of the Administration's credit availability program to date along with further actions that could stimulate bank lending; (3) our views on several pending legislative issues; and, finally, (4) our current thoughts on selection of an FDIC Chair.

INTRODUCTION

The banking and thrift industries in this country find themselves in the midst of a long term secular decline that worsened markedly in the last decade. Assets under management of banks and thrifts fell a full 10% in the last decade from 58% to 48% of total assets. This trend continues, but is temporarily overshadowed in the press by a cyclical upturn in profitability that in part reflects the interest rate environment but also reflects improvements to balance sheets as we have moved away from the depths of the last recession.

This secular decline results in part from anachronistic, inconsistent and frequently excessive legislative and regulatory restrictions on banks and thrifts. A perpetuation of such an environment will produce continued pressure for contraction of these industries. If the contraction results from regulatory inertia or excess, rather than economically sound rationalization, it could have a serious adverse impact on the overall economy. Banks and thrifts remain major sources of financing for consumers and businesses, and banks are

critical elements of both monetary policy and the payment system. A disorderly, non-economically based contraction of the system would harm businesses, consumers and communities, both directly and indirectly.

The Clinton Administration has an opportunity ~~to reduce the layers of inconsistent and excessively restrictive legislation and regulation that shackle the economic potential of these industries.~~ To accomplish this requires a principled policy that is very carefully executed. Careful execution is particularly necessary here because of the complex politics of the relevant committees in Congress, the 4 federal bank and thrift regulatory agencies, and the powerful special interest lobbies.

In our view, Administration policy with respect to insured depository institutions should emphasize two overarching themes:

- Access to credit and other financial services for all financially capable businesses and individuals through the elimination of non-economic barriers, including in particular those raised by regulation and discrimination; and
- Steady and prudent regulation in the interests of solid, long-term economic growth and the prevention of further deposit insurance crises.

Main Treasury and the OCC, in cooperation with the other federal bank regulatory agencies (FDIC, OTS, Federal Reserve), have launched several initiatives that reflect these themes, promoting credit availability through the removal and reform of regulations that irrationally impede lending to various kinds of borrowers. We believe these measures are having a positive effect on bank lending and will have an increasingly positive effect in the months ahead. We will pursue several additional steps in the weeks and months ahead.

We have also launched initiatives to end illegal lending discrimination and to otherwise encourage the availability of credit to low and moderate income individuals and small and medium sized companies and farms.

However, there remain several critically important matters that must be dealt with by Congress. Several of these matters will be taken up by Congress within the next few months. Options on how to deal with these issues and our preferred legislative approaches are outlined below. We seek your guidance on whether to proceed with our approach or to follow another path.

In carrying out the policies we have outlined above, it will be necessary to have an FDIC chairperson who, in addition to being competent on the issues, is loyal to your

Administration and its vision in this area, is a team player and does not detract from the Administration's ability to deal with Congress and the key Congressional committees. We have recommended Ricki Tigert for this position. However, as will be discussed in greater detail below, we believe that Bill Brandon would also be a fine candidate for this position, though his confirmation, and, if confirmed, his chairmanship, are likely to present some serious challenges resulting from his presidency of the ABA. (Further considerations on this important selection are discussed in section IV below.)

In developing our views in this policy area as well as our policy initiatives to date we have had a very cooperative relationship with a variety of people in the White House and in other Departments and agencies. In particular, we have worked closely with both Chris Edley at OMB and Ellen Seidman at the NEC, both of whom share the overall thrust of this memorandum. We would expect to work closely with Chris and Ellen in elaborating upon the approaches suggested by this memorandum, should these approaches meet with your approval.

DISCUSSION

I. The Architecture of Clinton Administration Depository Institutions Policy

(1) *Elimination of unnecessary barriers to the provision of credit and other products and services by banks and thrifts.* Such barriers can take a wide variety of forms, including:

- outmoded statutes, regulations, and supervisory practices;
- duplicative or conflicting regulatory requirements that consume financial and personnel resources that might better be expended in service to the economy; and
- illegal discrimination against classes of prospective borrowers and customers and other forms of prejudice that blind some lenders to the existence of sound business opportunities.

From the very start of this Administration, we have focused our attention -- and that of the institutions we regulate -- on this theme. It is the basis of the Credit Availability Program, and the Community Reinvestment Act reform effort you have asked us to implement, as well as the Community Development Financial Institutions Initiative moving through Congress. Emphasis on broadened credit availability is not only the right thing to do both philosophically and economically, but additionally, the Administration's vigorous pursuit of this goal has given the Administration political credibility with

community groups and others whose support will be important as we move to rationalize the regulatory system.

(2) ***Steady, prudent regulation in the interests of solid, long-term economic growth and the prevention of further deposit insurance crises.*** America's economy remains to some degree in a state of shock, partly induced by the serial collapses of the savings and loan industry and the savings and loan insurance fund as well as by the troubled bank environment of the 1987-92 period. Rebuilding confidence in America's depository institutions as well as the federal regulatory agencies that supervise and insure them is a critical step along the path of economic recovery. This combination of confidence and participation in the economic recovery depends on establishing a new balance between encouraging the risk-taking that is the role of financial intermediaries and regulating the system so risk is prudent, well managed, and properly capitalized.

We believe that, as your Administration proceeds, this theme will resonate in the day-to-day actions of your regulators, and in steady improvement in the condition and lending capacity of America's depository institutions. We also believe that in contrast to the last five years, numerous members of Congress and much of the press (as well as the vast majority of America's bankers) will be looking for actions in support of this theme (and will be hostile toward actions in derogation of it). However, we see no need for affirmative steps to highlight it at the Presidential level in the absence of a crisis.

Both main Treasury and the OCC are engaged, separately and jointly, in a variety of initiatives in this area, including new supervisory approaches, approaches to better protect the deposit insurance funds and approaches to avoid the insolvency of one or several depository institutions becoming a systemic problem. On the issues of further protection for the funds and systemic risk, we have been working closely with the Governors of the Federal Reserve Board.

II. Regulatory Activities

A. *The Credit Availability Program*

The Administration initiative in the depository institutions sphere that has received greatest attention is the Credit Availability Program ("CAP") announced at the White House on March 10.

First Phase: The federal bank regulatory agencies, coordinated by the OCC, completed the first phase of the CAP in June. With one exception where threatened litigation by the appraisal lobby has made regulatory change a longer process, all of the reforms designed in that phase have now been implemented.

Second Phase: As part of the second phase of the CAP, the OCC is now undertaking and encouraging the other bank regulatory agencies to undertake a number of initiatives:

- Rewriting rules, regulations, and policies to reduce compliance costs and paperwork burden to the industry. The OCC has already targeted over twenty policy areas for reform and will soon release major rule changes for public comment. In addition, bank examiners across the country are reviewing OCC's examiner guidance to identify dispensable procedures and requirements.
- Upon a motion of the OCC, the FDIC Board recently adopted a program to significantly reduce the number and burden of duplicate examinations of the same institution.
- The OCC, and at its behest the FDIC, have used guidelines and performance objectives, rather than command-and-control regulations to implement the most unnecessarily intensive requirements of recent banking legislation.
- The OCC has initiated a program to foster industry self-regulation as an adjunct to federal regulatory efforts. The OCC is working actively and successfully to encourage industry efforts in the areas of equal credit opportunity and mutual fund sales.
- At your initiative, the OCC is working with other bank regulatory agencies to combat discrimination in the banking industry and reform administration of the Community Reinvestment Act. Success with these efforts will significantly broaden credit availability for minority and low-income individuals and households.
- In conjunction with the NEC (Ellen Seidman) and OMB, (Chris Edley), we are working with the SBA (Erskine Bowles) to develop programs to spur small business lending. **From our discussions to date, including discussions with dozens of business leaders and bankers, we believe the most effective additional step the Administration can take to further spur small business lending is to expand the SBA small business guarantee program.** In addition, we are exploring potential improvement and expansion of the Small Business Investment Corp. (SBIC) program, through which banks can provide equity capital for small businesses.

Tone: As with virtually every other economic matter, achieving greater availability of credit and other banking services is heavily dependent upon the psychology of the participants. Accordingly, we have worked hard to set a tone which we believe resonates well with lenders, consumers and examiners.

More particularly, we have attempted to make certain: (i) that industry members understand that the Clinton Administration appreciates and is tackling the problems they face from excessive and inconsistent regulation; (ii) that consumer groups and the general public know that the Clinton Administration is working to ensure fair access to credit for all Americans; and (iii) finally that examiners understand that the Administration believes we can and must combine safety and soundness with fair and efficient access to credit, and examiners working to this end will be supported, not dangled as bait before Congress should there be another crisis.

We have actively gotten this message out through meetings held by the OCC with its examiners around the country, as well as through speeches and press interviews.

Results: Because the CAP initiatives are only beginning to take effect, available data is just beginning to demonstrate results. Nevertheless, we believe the CAP is having a positive effect on bank lending. We expect increasingly positive results as the initiatives taken under the program are adopted by banks and thrifts in the coming months.

Available data do not conflict with this surmise. After 11 quarters of decline, bank lending was up in the second quarter of this year. Lending was up in New England, which is just beginning to recover economically. However, lending was still flat in the far West which is not surprising given the economic slowdown in the region.

Given the lag time between the date rules are changed and the date they finally impact credit decisions, we would not expect the full effect of the rule changes to be apparent for several more quarters. However, while it is doubtful that the CAP reforms themselves had a great deal to do with the second quarter's increases, the positive psychology created by the announcement of the program and the aggressive way it has been carried out did, we believe, have a considerable impact on this increase. Informal surveys of bank executives confirm this indirect effect. We expect that as the CAP reforms themselves impact lending decisions, the effect of the program on loan growth will be increasingly positive.

B. Bank Investments in Government Securities

In recent months, various parties have advanced a number of proposals to stimulate bank lending by making it more costly for banks to hold government securities. Proponents of this change argue that, by making investments in government securities more costly, we will make other investment activities, especially loans, more attractive.

Although this step is permissible under the Basle accords, no other nation has placed a credit risk-weighting on its own sovereign securities. Moreover, we believe that

the impact of such a move would be unlikely to be positive in the aggregate. Indeed, it would probably have adverse macroeconomic consequences that vastly outweigh any conceivable benefit. (These views are shared by the Federal Reserve Board.)

Over the last several months, we have had many contacts with banks from all over the country, and we have seen no indication that increasing the capital charge on government securities would increase lending. In addition, we have seen no indication that providing greater flexibility in the area of securitization of small business loans would increase lending to small businesses, at least in the near term.

For the industry as a whole, increasing the capital charge assigned to government securities would have two clear effects:

- (1) To the extent banks choose to retain those securities, they would have to hold greater capital reserves, thus reducing their lending capacity; and
- (2) To the extent banks choose to divest government securities, the sell-off would increase the amount of federal government debt in the market, decreasing demand for that debt, increasing interest rates, and thereby undermining efforts to spark an economic recovery.

Accordingly, we (and the Federal Reserve) urge rejection of the proposals to artificially impose capital charges on government securities

C. Securities Underwriting

One of the important financial services areas from which banking organizations have largely been restricted since the 1930s has been underwriting securities. Although this is an area that has been portrayed as "too risky" for banks, in point of fact the area has proved materially less risky than making loans over the years. In part this stems from a variety of underwriting techniques that limit the extent to which, and the time during which, the underwriter is at risk.

The underwriting of securities is a natural business for banks as it is another facet of the credit extension business. It is an area that has experienced steady growth over the last few decades. Moreover, the securities underwriting business is currently quite concentrated with relatively few participants. The competitive pressures that would be generated by allowing banks to engage in more of this activity would probably benefit both businesses and the economy more generally.

The Federal Reserve Board, under currently applicable law, has permitted certain subsidiaries of bank holding companies to underwrite a limited amount of securities. The Fed has the power to expand this window considerably. However, the Fed has failed to take action in this area out of concern that political forces will either seek to reverse the Fed's action or take other adverse actions.

Accordingly, the Fed is reluctant to take action on its own at this time. However, we have discussed this subject at considerable length with Alan Greenspan who tells us that the Fed would take some modest action to expand the underwriting opportunities for banking organizations if the Clinton Administration would publicly support it as appropriate. This action would still limit banking companies to conducting such activities as a small percentage of separate subsidiaries, funded entirely without insured deposits.

We recommend that we tell the Fed that we would support a technical regulatory change that would modestly expand the opportunities for banking organizations to engage in underwriting activities under existing law, provided that after consultation with the Administration's legislative affairs office it is clear that the timing is appropriate, and that Congressional reaction is not likely to present significant problems. Any further steps in this area would be held for careful consideration next year.

In addition, we propose a serious examination of potential legislation that would permit banking organizations to underwrite securities offerings for, and invest in small and medium sized companies. This is a market that is under served and that needs equity and debt capital. It is a market that the banks often tend to know best.

III. Legislative Issues

Congressional actions are rapidly moving the Administration toward the point at which it must take definitive positions on a number of legislative issues. In particular, Senate Banking Committee and the Financial Institutions Subcommittee of the House Banking Committee (Neal) have announced fall legislative agendas that focus on four issues with significant policy implications: (1) reduction of regulatory burden; (2) interstate branching; (3) consolidation of the bank regulatory agencies; and (4) bank sales of insurance.

This portion of the memorandum provides recommendations and brief overviews of each of these issues.

We believe any decision in these areas should be based on the broad architecture (or basic themes) of a Clinton era depository institutions policy, as outlined above. That architecture can be applied to the issues set out below and other major issues if we assess them on the basis of two tests.

- Does the proposal on balance benefit the economy and the consumer (including business and individual consumers); and
- Does the proposal on balance materially decrease or increase the safety and soundness of depository institutions?

A. *Reduction of Regulatory Burden:* Although much is being done now to reduce needless regulatory burdens on banks through administrative actions, some steps require legislative change. Bills have been introduced in both the House and Senate, based on a "laundry list" from the bank trade associations to provide "regulatory relief." While many of the provisions of these bills are sound and appropriate, many others are overdone and would be highly controversial in Congress if actually brought to mark-up.

Members of both Houses have initiated efforts to add these bills to the Community Development Financial Institutions Bill ("CDFI"). Although we believe that there is merit in supporting the constructive elements of these regulatory relief bills, we have had a great concern that, if laden down with the full laundry list, the CDFI bill would get mired in long and vehement Congressional disputes. Fortunately, working with others in the Administration and in the Senate, we have been able to get a more focused version of the regulatory relief legislation incorporated into the Senate version of the CDFI bill, and to reach an agreement with the American Bankers Association that this focused approach is wise. The CDFI bill, incorporating this focused regulatory relief approach, recently passed the Senate Banking Committee with a strong bipartisan vote of 18-1. We will be working towards a similar approach in the House.

B. *Interstate Branching:* The Douglas amendment to the Bank Holding Company Act permits banking organizations to own banks in any state where the host state permits such ownership. Currently, virtually every state in the United States allows some out-of-state banking organizations to own a bank in the state. Accordingly, interstate banking, though something of a patchwork, already exists. The current structure is extremely clumsy, however, for customers as well as for the banks. For example, even though several banking companies operate subsidiary banks in Virginia, Maryland and the District of Columbia, they are legally separate -- so a customer of NationsBank who has an account at a Virginia branch cannot make a deposit at a NationsBank branch near his or her office in D.C.

The current patchwork can be altered in a variety of ways to make it more rational. At the furthest extreme, so-called "full interstate branch banking," a bank could be permitted to branch anywhere in the country it wished. At the other extreme, so-called "branch consolidation," a banking organization would merely be allowed to convert its existing multi-bank, multi-state system into a one bank multiple-branch organization.

This latter option, branch consolidation, would leave it entirely to the states to determine which banks they let into their states and where in their states an entrant could branch. Given the complex politics on this issue in Congress, we favor pursuing the branch consolidation route at this time.

If we analyze branch consolidation on the basis of the two criteria we have proposed, it is highly desirable: first, allowing branch consolidation would make existing organizations much more efficient. These efficiencies will, in part at least, translate into increased lending or more competitive service to the benefit of the consumer, and will provide more rational, convenient service for bank customers. Moreover, branch consolidation raises virtually none of the states rights issues or the community service issues raised by full interstate branch banking. This approach would apply only to those states that already permit out-of-state bank holding companies to own banks in the state, and would honor each state's laws governing branch locations.

Concurrently, branch consolidation translates into more rationally organized and run banking organizations that are easier to examine. The increased efficiency should aid in capital formation. Hence, permitting branch consolidation increases the safety and soundness of the system.

This does not mean this proposal is non-controversial. On the contrary, community bankers will fight any move that makes multi-state banking better, and some community groups are concerned that any move toward larger banks will reduce commitment to and service in local, particularly small and rural, communities. By adopting the branch consolidation version of interstate branching, we believe those objections can be overcome on the merits. We believe that after voicing some concern the community groups will accept branch consolidation legislation, if they get something in return. And, while the community bankers, as a trade association, are unlikely ever to support any form of interstate branching, we think they might be inclined not to fight too much -- again if they get something in return. The key, in our opinion, is CRA reform. If the community groups believe our CRA effort will indeed force all banks -- but particularly regional and national banks, to serve all communities in which they are located, and the small bankers are able to be relieved of some regulatory burden in this area, opposition to branch consolidation could dissipate. The key is attention to the varied interests, and careful timing of the CRA proposals.

We recommend that the Administration support legislation to permit branch consolidation. (Such legislation has already been introduced in Congress in various forms.)

As a timing matter, Chairman Riegle has decided to hold hearings on interstate branching this fall, and has asked both of us to address this issue in testimony before the Senate Banking Committee. A similar request has been made by Congressman Neal for testimony before the House Banking Committee's Financial Institutions Subcommittee.

C. *Regulatory Consolidation:* Both Chairman Riegle and Chairman Gonzalez strongly support legislation to consolidate the existing bank regulatory agencies into a single regulator. Senator Riegle has asked Frank Newman to present the Administration's views on this issue at a November hearing.

We believe that carefully structured and implemented regulatory consolidation is good public policy. The existing multiplicity of bank regulatory agencies is highly inefficient and a significant source of regulatory burden to the banking industry. Having a single regulator (or at least fewer than today's four) would significantly simplify both the formulation of policy and the conduct of supervision. The current system is complex, confused, and provides at best a barely workable mechanism for setting and implementing policy. It should be rationalized now, when the banking industry is healthy and rationalization enjoys substantial congressional support. **We therefore recommend that the Administration support regulatory consolidation in an appropriate form.**

The approach we have been taking in discussing this issue with the Fed emphasizes three legs to the safety and soundness stool -- balanced and effective supervision, management of systemic risk and deposit insurance. In this structure we see the OCC taking the lead on supervision, the Fed on systemic risk (and its use of the discount window and other tools to deal with this problem), and the FDIC on deposit insurance and liquidation. By focusing these agencies on their historic missions, we will be working towards improvements in the environment for safety and soundness, efficiencies in the federal government's operations, and reductions in unnecessary burdens on the regulated entities.

Alan Greenspan is largely in agreement with the thrust of this approach, although he has a not surprising inclination towards protecting some of the activities of the Fed. We have been having discussions with Alan Greenspan, as well as Fed Governors Mullins and LaWare to explore those activities in which the Fed feels strongly about maintaining a continuing role.

A potential stumbling block for consolidation is the question whether the consolidated regulator should be part of the Treasury or independent of the Executive Branch. In 1991, a Bush Administration consolidation proposal died partly over this issue, with House and Senate leadership both insisting on independence. We believe compromise solutions are possible (for example, the principal regulator could be governed by a board including significant Treasury and majority Administrative representation), and have received expressions of interest from the Hill in negotiating a compromise. In the end, although the new entity need not be housed in Treasury, it is extremely important that Treasury have significant influence over the entity, and thus over banking policy, in order to maintain this aspect of the Administration's ability to influence the economy.

Although more work is needed to develop the specific structures, we recommend that the Administration support an approach along these policy lines that would reduce the number of regulators from four to one or two. Such consolidation would also be in concert with the directions espoused in the National Performance Review.

D. Bank Insurance Sales: Recent court decisions have established the authority of national banks to use branches in small towns as platforms for nationwide insurance sales. The Senate and House Banking Committees have invited the two of us to testify for the Administration on this issue in October or November. We expect that insurance-agent lobbies will press for legislation to cut back this existing authority.

We know of no legitimate public policy reasons for denying banks the ability to sell insurance. However, there is a strong, self-interested lobbying effort underway against this on the part of the insurance industry and agents, and there will be an active political battle over this issue in Congress, regardless of the position of the Administration.

One possible compromise that we have raised publicly and that seems to have received a positive response from both community groups and banks is to allow banks to establish insurance sales operations in poor inner city areas and from there perhaps to sell insurance to a broader market, perhaps statewide or throughout a metropolitan area. This would allow banks to provide a much needed service in the inner cities as well as to encourage them to increase employment in the inner cities by establishing their insurance sales headquarters there.

There are valid public policy reasons for permitting banks to offer insurance services, benefitting both consumers and banking industry soundness and capacity. At the same time, the inter-industry fight could prove hard to win and distracting to other Administration priorities. **Accordingly, we recommend that the Administration support on public-interest grounds the notion that banks ought to be allowed to continue to sell**

insurance as current law permits and work to develop further the idea of insurance sales by banks in and from inner cities. Because of the political complexities of the issue, however, we further recommend that the Administration avoid significant investments of political capital in this position. This process would be coordinated closely with Howard Paster as well as Michael Levy, who heads legislative affairs for Treasury.

IV. FDIC Chairmanship

Criteria:

In order for you to have a strong financial services policy that supports economic growth and expansion you must have an FDIC Chair who shares your agenda, can work collegially with the other regulators and has an understanding of, and an intellectual ability to deal with, complex bank regulatory matters. There are several reasons for this:

- Once appointed, the FDIC chairman is independent and cannot be removed. In the Bush Administration, FDIC Chairman Bill Seidman pursued an agenda sharply conflicting with that of the Administration. This possibility is heightened by Congressional pressures and the peculiarities of the FDIC staff.
- In order for the Clinton Administration to achieve its credit availability goals, it is essential that the FDIC concentrate on its historic core mission of supervising the deposit insurance fund and liquidating failed institutions. This vision of the FDIC as solely the insurer and liquidator engaging only in very special circumstances in special examinations of the weaker institutions and enforcement to protect the fund, is critical to keep the FDIC from duplicating or triplicating bank and thrift examinations, as well as pursuing excessive and burdensome regulatory initiatives.

{ Some part of this effort to focus the mission of the FDIC and keep it from chilling bank lending, through burdensome duplication of examination and excessive regulatory initiatives, was accomplished in a joint agency agreement pursuant to the Administration's credit availability initiative, and several FDIC Board actions, culminating recently in a decision to sharply limit duplicative examinations.

- The willingness of the Federal Reserve Board to be helpful in pursuing Administrative objectives is affected not only by the Fed's relationship with the White House and Treasury, but also by how the Fed feels vis a vis the FDIC. Currently, the Fed and the Clinton Administration working group

have an excellent relationship. The wrong FDIC chairman could harm this constructive program.

- The FDIC chairperson should be someone who is analytically strong. Much of what the FDIC has to deal with involves a massive amount of rules, regulations and statistics that greatly impact banks and thrifts.
- With all this said, an FDIC chairman cannot be perceived as too strongly influenced by the industry or insensitive to safety and soundness concerns. Any such perception would render Senate confirmation problematic, if not impossible, and damage the new Chairman's ability to support a credit expansion agenda.

Ricki Tigert

Having reviewed dozens of candidates for Chairperson of the FDIC, we are convinced that Ricki Tigert is an excellent candidate and have recommended that the White House should move on her nomination immediately. We have come to this conclusion for several reasons.

- Ricki clearly shares the view that the FDIC should focus its resources and attention on its core mission of insuring and liquidating, and not on regulation of healthy banks. And, Ms. Tigert is a strong supporter of your Administration.
- Ricki is very strong substantively. She has exceptionally fine academic and substantive credentials and as a former Treasury Official and as Fed Deputy General Counsel, Ms. Tigert has considerable experience in this area.
- Ricki is respected by Fed Chairman Greenspan and other Fed Governors. We are confident that she would be able to work well with the Fed and its staff, as well as with the Administration.
- Having come from a small town in Tennessee, and having done a considerable amount of work professionally with smaller institutions, including minority institutions, Ricki is clearly sensitive to the important role of community banks in this country.
- Ricki would make a major contribution to the President's goal of making Washington's senior officials more diverse. There has never been a senior bank regulator in the history of the country who has not been a white male.

- Ricki is confirmable.

Bill Brandon

Another key candidate is Bill Brandon. Bill approached us about the FDIC chairmanship and informed us that he believes that whatever competition there might have been in the past between Bill Bowen and himself was now resolved as Mr. Bowen has taken a new position in hospital administration in Arkansas. While neither of us know Bill very well, we have both had occasion to work with him over the last several months and we have talked with him at some length about the FDIC job and his vision of that organization's role and your Administration. We have come away from these meetings with the belief that Bill is a very fine person who, not surprisingly as a senior bank officer and American Bankers Association President, is quite knowledgeable about banking issues.

Bill appears to share a vision of the FDIC that would be consistent with your credit availability initiatives. Moreover, Bill almost certainly has the forcefulness for the job.

However, we have reservations about nominating Bill for this position because of his current position as President of the ABA. Although it may well be the case that if the Administration put on a campaign, Bill would be confirmable, Bill is quite likely to be viewed by some in Congress and a variety of important consumer groups as the fox guarding the hen house. This perception would be almost certain to limit his ability to pursue the regulatory agenda needed to support the credit availability initiative, and his nomination would almost certainly be damaging to the credibility of your Administration with these groups.

With all this said, we both like Bill and would be pleased to explore further the viability of his candidacy for the FDIC job, if you would like us to.

* * *

Pursuing an appropriate bank and thrift regulatory policy can prove to be a material support to the economy. In the past, policy and regulation in this area has been badly handled. Without significant changes, this support will be almost impossible to realize. Moreover, the banking and thrift sector, without significant changes, could well prove over time to be a drag on the economy. We believe that the program described in this memo provides the initial steps to make needed changes, as well as a framework for additional initiatives to implement over time. We look forward to the opportunity to discuss the specifics with you.