

Conference Report [Conference report H. Rept. 103-651] on HR 3841

[9/29/1994 Became Public Law No: 103-328, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994]

Congressional Record 3 August 1994

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Mr. RIEGLE. I ask unanimous consent that the statement of managers filed with the conference report on H.R. 3841, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which is attached, be reprinted in today's **Congressional Record**. The version of the statement printed in the August 2, 1994, **Congressional Record** omitted the crucial words 'or branch' on page H6641 in the statement of managers description of 'Applicability of Section 5197 of the Revised Statutes and Section 27 of the FDI Act.' Reprinting it here will ensure that the public has the correct version.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3841) to amend the Bank Holding Company Act of 1956, the Revised Statutes of the United States, and the Federal Deposit Insurance Act to provide for interstate banking and branching, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

SUMMARY OF MAJOR PROVISIONS

Title I--Interstate Banking and Branching

INTERSTATE BANKING

The legislation permits bank holding companies to acquire banks in any State one year after enactment of the legislation. State laws which require the acquiring company to acquire a bank that has been in existence for a specified minimum period of time (not to exceed five years) are preserved. Any State law which requires a bank to be acquired to be in existence for more than five years applies as if it requires that the bank being acquired be five years old.

Section 3(d)(1)(D) of the Bank Holding Company Act, as amended by section 101, protects the applicability of a State law that makes the acquisition of a bank contingent upon a requirement that a portion of the bank's assets be available to a State-sponsored housing entity established under State law, under the conditions that the State law is not discriminatory, that the State law was in effect as of the date of enactment of this Act and that compliance with the State law would not result in an unacceptable risk to the deposit insurance fund and would not place the bank in an unsafe or unsound condition.

The Federal Reserve Board may not approve an interstate acquisition if, as a result of the acquisition, the bank holding company would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States or 30 percent or more of the deposits in the home State of the bank to be acquired. Notwithstanding the 30 percent limit, the Board could approve such a transaction if the home State waives the 30 percent limit either by statute, regulation, or order of the appropriate State official based on standards that do not have the effect of discriminating against out-of-State institutions.

The above concentration limits do not apply to initial entry into a State by a bank holding company. If, however, a State has a deposit concentration cap which applies in a nondiscriminatory manner to both in-State and out-of-State bank holding companies making initial entry acquisitions, then nothing in the legislation affects the State's authority to impose such deposit cap.

Community Reinvestment Laws

The Board shall continue to comply with its responsibilities under the Community Reinvestment Act of 1977 with respect to applications under section 3(d) of the Bank Holding Company Act of 1956. Currently the Board reviews applications under section 3(d) in accordance with existing regulations (such as Regulations Y and BB) and practices, and the conferees intend that nothing in this bill will alter or affect such regulations and practices as established by the Board.

In acting on an application under section 3(d), the Board shall also consider the applicant's record of compliance with applicable state community reinvestment laws.

Applicability of Antitrust Laws

The title provides that no provision of the antitrust laws is to be construed as being affected by the interstate banking amendments to the Bank Holding Company Act, including the Act's provisions on concentration limits. The applicability, if any, of State antitrust laws is likewise preserved. Nothing in this provision is intended to affect or expand the existing applicability of State antitrust laws, under current statutory or case law, to interstate acquisitions.

STATE TAXATION AUTHORITY

Section 101(b) amends the Bank Holding Company Act of 1956 to provide that nothing in that Act shall be construed as affecting the authority of any State or political subdivision to adopt, apply or administer any tax or method of taxation to any bank, bank holding company or foreign bank, or their affiliates, to the extent that such tax or tax method is otherwise permissible under the Constitution or other Federal law. This is intended to clarify that it is not the Conferees' intent to overturn existing State tax law pertaining to distinct legal entities within a corporate structure. The provision recognizes the existence of corporate affiliates and reaffirms that States may segregate the separately incorporated entities within a bank or bank holding company for state taxation purposes, to the extent permissible under the Constitution or other Federal law.

Similar amendments are made to section 44 of the Federal Deposit Insurance Act and to Title I.

AFFILIATED BANKS AS AGENTS

The Conferees accepted a modified version of a provision in the House bill permitting certain affiliated depository institutions to act as agents for each other for purposes of receiving deposits, renewing time deposits, closing loans, servicing loans and receiving payments on loans and other obligations for other affiliated depository institutions, with several amendments.

The modified provision permits bank subsidiaries, rather than depository institution subsidiaries, of bank holding companies to act as agents for depository institution affiliates. Subject to certain conditions, insured savings associations which were affiliated with banks as of July 1, 1994, may act as agents for such banks under this provision.

As used in this provision, the term 'receive deposits' means the taking of deposits to be credited to an existing account and is not meant to include the opening or origination of new deposit accounts at an affiliated institution by the agent institution.

The Conferees deleted the authority in the House bill for affiliated depository institutions to disburse the proceeds of loans for other affiliated depository institutions and substituted authority to service loans. The Conferees intend that, under this authority to service loans, agent banks may perform ministerial functions for the principal bank making a loan. Those ministerial functions include such activities as providing loan applications, assembling documents, providing a location for returning documents necessary for making the loan, providing loan account information (such as outstanding loan balances), and receiving payments. It does not include such loan functions as evaluating applications or disbursing loan funds. The term 'close loans' does not include the making of a decision to extend credit or the extension of credit.

The Conferees also intend that the provision permit affiliated banks to act as agents for one another regardless of whether the institutions are located in the same or different states.

Under section 18(r)(3) of the Federal Deposit Insurance Act (as added by section 101(d) of this title), a bank may not conduct any activity as an agent that such bank is prohibited from conducting as principal under applicable Federal or State law. Prohibited activities under this provision include activities by a bank acting as agent that would be prohibited to the bank acting as principal under the applicable consumer protection, powers and other laws of the State where the bank is situated. The Conferees intend that the limitation on acting as agent under section 18(r)(3) shall also be applied to all United States offices of foreign banks covered under the definition of bank in the Act, when acting as agent for a depository institution affiliate. Agency relationships may be used to promote operational efficiencies, but they may not be used to evade applicable consumer protection, powers, and other laws of the State where the agent institution is situated.

The Conferees also intend to clarify, through the addition of a savings clause, that this section does not affect the authority of a depository institution to be an agent for a depository institution under any other provision of law, nor does it affect a determination under any other provision of law whether the agent should be considered to be a branch of the depository institution. The Conferees do not intend that new subsection 18(r) of the Federal Deposit Insurance Act affect the application of other provisions of law which permit agency relationships between affiliated depository institutions. The Conferees note that subsection 18(r) applies narrowly only to

affiliated depository institutions acting as agents, and has no application to agency relationships concerning non-depositories as agent, whether or not affiliated with the depository institution.

Section 18(r) shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from one Federal deposit insurance fund to the other Federal deposit insurance fund.

INTERSTATE BRANCHING

Introduction

The Conferees decided on an interstate branching structure somewhat different than the structure of either the House or the Senate bills. Under the House structure, branching (other than the establishment of de novo branches) was permitted three years after enactment through a one-step acquisition of an existing bank and its conversion to branches of the acquiring bank, under the National Bank Act for national banks or the Federal Deposit Insurance Act for State banks. The Senate structure used a two-step process effective June 1, 1997, with the interstate acquisition of a bank under the Bank Holding Company Act of 1956 subsequently followed by a consolidation of the newly acquired bank with another bank owned by the holding company.

The Conferees adopted a structure under which a bank would engage in a merger transaction with the out-of-State bank and convert any of its offices into branches of the resulting bank under the authority of a new section of the Federal Deposit Insurance Act. Such a transaction would be subject to approval under the Bank Merger Act.

The House bill authorized bank holding companies to consolidate affiliated banks into a single bank with interstate branches 18 months after enactment of the legislation. The Senate bill did not provide for early consolidation. The House receded to the Senate, thereby permitting consolidation of affiliated banks in different States through an interstate merger transaction when interstate branching takes effect on June 1, 1997.

Once a bank has established branches in a host State through an interstate merger transaction, such bank may establish and acquire additional branches at any location in the host State where any bank involved in the interstate merger transaction could have established or acquired branches under applicable Federal or State law.

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Interstate Branching Through Mergers

Beginning June 1, 1997, a bank may merge with a bank in another State so long as both States have not opted out of interstate branching between the date of enactment and May 31, 1997. States may enact laws opting-out of interstate branching before June 1, 1997, subject to certain conditions. States may also enact laws permitting interstate merger transactions before June 1, 1997. Host States may impose conditions on a branch resulting from an interstate merger transaction that occurs before June 1, 1997, if the conditions do not discriminate against out-of-State banks, are not preempted by Federal law, and do not apply or require performance after May 31, 1997.

State laws requiring out-of-State banks or bank holding companies to merge with, or acquire a bank that has been in existence for a specified minimum period of time (not to exceed five years) are preserved with respect to interstate merger transactions. Any such State law which imposes a minimum age requirement of more than five years on a bank to be acquired is to be applied as if the minimum age requirement is five years.

Any bank that files an application for an interstate merger transaction shall comply with any filing requirement of any host State of the bank resulting from the transaction, to the extent the requirement does not discriminate against out-of-State banks or bank holding companies, and is similar to any requirement imposed on nonbanking corporations incorporated in another State that engage in business in the host State. Banks must also file a copy of the application for the interstate merger transaction with the State bank supervisor of the host State. The responsible agency may not approve an application if the applicant materially fails to comply with the host State's filing requirements.

The responsible agency may not approve an application for an interstate merger if the resulting bank would control more than 10 percent or more of the total amount of deposits of insured depository institutions in the United States or 30 percent or more of the deposits in any State affected by the interstate merger. Notwithstanding the 30 percent limit, the responsible agency could approve such a transaction if the home State waives the 30 percent limit either by statute, regulation, or order of the appropriate State official based on standards that do not have the effect of discriminating against out-of-state institutions.

The concentration limits do not apply with respect to any interstate merger transactions involving affiliated banks. The concentration limits also do not apply to initial entry into a State by a bank or its affiliates. If, however, a State has a deposit concentration cap which applies in a non-discriminatory manner to both in-State and out-of-State banks and bank holding companies, then nothing in the legislation affects the State's authority also to impose such deposit caps to initial entries.

The responsible agency may approve an application for a merger only if each bank involved in the transaction is adequately capitalized as of the date the application is filed, and the agency determines that the resulting bank will continue to be adequately capitalized and adequately managed.

The laws of the host State regarding community reinvestment, consumer protection (including applicable usury ceilings), fair lending, and establishment of intrastate branches shall apply to any branch of a national bank in the host State to the same extent as such State laws apply to a branch of a bank chartered by that State, except when Federal law preempts, or when the Comptroller determines that the law has a discriminatory effect on the branch in comparison to branches of State-chartered banks. Such laws shall be enforced by the Comptroller of the Currency.

Acquisition of Branches

New section 44(a)(4)(A) of the Federal Deposit Insurance Act (as added by section 102(a)) permits the responsible Federal regulator to approve the acquisition of a branch of an insured

bank without the acquisition of the entire bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank without acquiring the bank. The Conferees intend that, in approving such acquisitions, Federal regulators will ensure that state minimum age restrictions under paragraph (5) which apply to such acquisitions are preserved. Federal banking agencies should not approve the acquisition of a branch (if permitted under paragraph (4)) in host States which have minimum age laws regarding the acquisition of banks, unless such laws expressly permit branches in the host state to be acquired without the acquisition of the bank.

Applicability of Community Reinvestment Laws

Under current law, most interstate movement by banking organizations takes place via the Bank Holding Company Act. Current regulations and practices of the Board of Governors of Federal Reserve System delineate the scope of CRA performance considered by the Board in acting on applications by a bank holding company to move interstate via section 3(d) of the Bank Holding Company Act.

Section 44(b)(3) of the Federal Deposit Insurance Act (as added by section 102(a) of this title) provides that, only with respect to initial entry into a host state by a bank without branches or a bank affiliate in that host state, the scope of CRA performance considered by the responsible Federal banking agency in connection with an interstate branching application will parallel the scope of CRA performance which would be considered by the Board of Governors of the Federal Reserve System (to the same extent as outlined in the statement of managers accompanying section 3(d)(3) of the Bank Holding Company Act of 1956, as amended by section 101(a) of this title) if the application were for an interstate bank holding company acquisition pursuant to section 3(d) of the Bank Holding Company Act. Hence, in those cases of initial entry, the Conferees intend that the responsible federal banking agency comply with its responsibilities under section 804 of CRA consistent with current regulations and practices with respect to bank mergers and also to take into account the CRA record, including the most recent written evaluation, of any affiliate banks of the resulting bank.

With respect to all other interstate branching applications apart from those involving initial entry into a host state, the responsible Federal banking agency shall carry out its responsibilities under section 804 of the Community Reinvestment Act consistent with its current regulations and practices with respect to bank mergers.

In all cases, when taking into account the CRA performance of an institution with branches in more than one state in connection with acting on an interstate branching application, the Conferees expect that the responsible Federal banking agency will take into account the institution's performance under CRA in each state in which it maintains branches.

In addition, when acting on a interstate branching application, the responsible Federal banking agency shall take into account the records of compliance with applicable State community reinvestment laws of any applicant bank.

Applicable State Law

States have a strong interest in the activities and operations of depository institutions doing business within their jurisdictions, regardless of the type of charter an institution holds. In particular, States have a legitimate interest in protecting the rights of their consumers, businesses, and communities. Federal banking agencies, through their opinion letters and interpretive rules on preemption issues, play an important role in maintaining the balance of Federal and State law under the dual banking system. Congress does not intend that the Interstate Banking and Branching Efficiency Act of 1994 alter this balance and thereby weaken States' authority to protect the interests of their consumers, businesses, or communities.

Accordingly, the title emphasizes that a host state's laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches will apply to interstate branches of national banks established in the host state to the same extent as those laws apply to a branch of a State bank, except when Federal law preempts application of the State laws to a national bank, or when the Comptroller of the Currency determines that the State laws have a discriminatory effect on the branch as compared with their effect on a branch of a State bank.

Under well-established judicial principles, national banks are subject to State law in many significant respects. The laws of the State in which a national bank is situated will apply to the national bank unless those State laws are preempted by Federal law. Generally, State law applies to national banks unless the State law is in direct conflict with the Federal law, Federal law is so comprehensive as to evidence Congressional intent to occupy a given field, or the State law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law. In this regard, the impact of a State law on the safe and sound operations of a national bank is one factor that may be taken into account in considering whether Federal law preempts State law. Courts generally use a rule of construction that avoids finding a conflict between the Federal and State law where possible. The title does not change these judicially established principles.

During the course of consideration of the title, the Conferees have been made aware of certain circumstances in which the Federal banking agencies have applied traditional preemption principles in a manner the Conferees believe is inappropriately aggressive, resulting in preemption of State law in situations where the federal interest did not warrant that result. One illustration is OCC Interpretive Letter No. 572, dated January 15, 1992, from the OCC to Robert M. Jaworski, Assistant Commissioner, State of New Jersey Department of Banking, concluding that national banks in New Jersey are not required to comply with the New Jersey Consumer Checking Account Act. It is of utmost concern to the Conferees that the agencies issue opinion letters and interpretive rules concluding that Federal law preempts state law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches only when the agency has determined that the Federal policy interest in preemption is clear. In the case of Interpretive Letter No. 572, it is the sense of the Conferees that the fact the Congress has acknowledged the benefits of more widespread use of lifeline accounts through the enactment of the Bank Enterprise Act did not indicate that Congress intended to override State basic banking laws, or occupy the area of basic banking services to such an extent as to displace State laws, or that the existence of State basic banking laws frustrated the purpose of Congress.

The Conferees have similar concerns regarding the scope of the OCC interpretive rule that appears at 12 C.F.R. 7.8000, which broadly asserts that Federal law governing the deposit-taking functions of national banks preempts any State law that attempts to prohibit, limit, or restrict deposit account service charges. In light of the Conferees' views regarding the proper application of recognized preemption standards discussed above, the Conferees urge the OCC to review Interpretive Ruling 7.800 to determine if it should be withdrawn or revised.

The Conferees understand that in certain cases some states have imposed conditions on, or obtained commitments from, bank holding companies in connection with a company's acquisition of banks outside its home state. The title provides that such conditions or commitments existing as of the date of enactment of the Interstate Banking and Branching Efficiency Act of 1994 will continue to be enforceable against the bank holding company or an affiliated successor company to the same extent as they were previously if a bank holding company with bank subsidiaries in more than one state chooses to combine its banks under new section 44 of the Federal Deposit Insurance Act (as added by section 102(a) of this title). The title does not create any new State enforcement authority with respect to any conditions imposed or commitments made before the enactment of the title.

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Interpretations Concerning Federal Preemption of State Law

In view of the Congressional concern regarding preemption of State law regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, the Conferees concluded that a more open process for reaching preemption conclusions in these areas, with a clearly structured, meaningful opportunity for interested parties to communicate their views to the agency, was warranted. Also, it is important that the agencies make their determinations on Federal preemption of State law available to the public in a timely and accessible manner. Accordingly, the title imposes certain procedural requirements on agency preemption opinion letters and interpretive rules in connection with State laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, whether or not related to interstate branching. The Conferees believe that the public notice and openness provided by the new process will be a vital safeguard to ensure that an agency applies the recognized principles of preemption, discussed above, in a balanced fashion.

The title provides that before issuing any opinion letter or interpretive ruling concluding that Federal law preempts State law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches, the appropriate Federal banking agency will publish notice in the Federal Register of the request, or of the agency's intention on its own motion, to determine whether Federal law preempts a particular State law. The notice should describe each State law in question and otherwise provide information sufficient to enable interested parties to comment meaningfully on the issue under consideration. The agency also should promptly make available upon request a copy of any incoming request letter. The title also requires the agency to publish in the Federal Register a copy of the final opinion letter or interpretive rule.

The Federal Register publication requirement is intended to provide readily available and widespread notice to interested parties of the opportunity to comment on preemption matters that

have not been previously resolved by the agency or courts. The title requires the agency to give interested parties not less than 30 days in which to submit comments. In establishing the length of the comment period, the Conferees intend that the agencies should take into account the complexity of the preemption issue involved and the number of parties likely interested in responding to the solicitation of public comment and the resources of those parties. The Conferees also expect the agencies to be flexible in extending the comment period if requested to do so by an interested party for good cause shown. The title further requires the agency to take the public comments into account in reaching its decision, even though each particular comment need not be specifically discussed in the final product.

This process is not intended to confer upon the agency any new authority to preempt or to determine preemptive Congressional intent in the four areas described, or to change the substantive theories of preemption as set forth in existing law. Rather, it is intended to help focus any administrative preemption analysis and to help ensure that an agency only makes a preemption determination when the legal basis is compelling and the Federal policy interest is clear.

The public notice and comment process is not required when a particular request raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the agency or the courts, or when the incoming request regarding preemption contains no significant legal basis upon which to make a preemption determination. The title also exempts materials prepared for use in judicial proceedings, for submission to Congress or a member of Congress, and for intra-governmental use from the new public notice requirements. The intra-governmental use exception, in particular, is intended to carve out an exception for materials provided to or from, or shared with, agency personnel or other agencies in the Executive Branch. Examples of the type of such material include, but are not limited to, memoranda, letters, correspondence, advisory opinions, or other materials that are part of the deliberative process that governs the making of decisions and policies within the Executive Branch. An exception to the notice and comment provisions is also provided in cases when the appropriate Federal banking agency determines in writing that the exception is necessary to avoid a serious and imminent threat to the safety and soundness of a national bank.

The Comptroller must follow the notice and comment process in making any determination under section 5155(f)(1)(A)(ii) of the Revised Statutes that State laws discriminate against a branch of a national bank as compared with a branch of a State bank.

The Conferees expect that the Federal banking agencies will be receptive to well-supported requests from interested parties seeking reconsideration of previous interpretive rules or opinions regarding state community reinvestment, consumer protection, fair lending and intrastate branching laws, consistent with the approach to preemption discussed above.

Host State Notification Requirements

Host States may impose any notification or reporting requirement on a branch in the State if the requirement does not discriminate against out-of-State banks and is not preempted by Federal law. Such requirement is in addition to the filing requirement for individual transactions.

State Opt-Out of Interstate Branching

Section 44(a)(2) of the Federal Deposit Insurance Act (as added by section 102(a)) provides that States may opt out of interstate branching by enacting legislation after the date of enactment of the title and before June 1, 1997. If a State opts-out, no bank in any other state may establish a branch in that State, either State, either through an acquisition or de novo. A bank whose home State opts-out of interstate branching may not participate in any interstate merger transaction.

Interstate Branching De Novo With State Authorization

The appropriate Federal regulator may approve an application by a bank to establish and operate a de novo branch in a State in which the bank does not maintain a branch if a State opts-in to de novo branching, and expressly permits de novo branching. The establishment of the initial branch in a host State which permits de novo interstate branching is subject to the same requirements which apply to the initial acquisition of a bank in the host State, other than the deposit concentration limits. Those limits are inapplicable to de novo entry since, by definition, the bank would not control any deposits in the host State at the time of entry.

Once a bank has established a branch in a host State by de novo branching such bank may establish and acquire additional branches at any location in the host State in the same manner as a bank could have established or acquired under applicable Federal or State law.

Exclusive Means of Interstate Branching

The Conferees adopted provisions to assure that the comprehensive framework for interstate branching established by Title I will, when the provisions take effect, be the exclusive means for national and State banks to enter new States with interstate branches.

Paragraphs (2) and (3) of section 102(b) amend the National Bank Act and the Federal Deposit Insurance Act, respectively, to state that when the interstate merger and branching provisions take effect, initial interstate entry into a host State may, with exceptions for certain emergency situations, occur only in accordance with this legislation. These provisions will assure that the conditions and safeguards which accompany initial interstate branching will apply to the establishment of interstate branching networks at the time those provisions take effect.

The Comptroller of the Currency (OCC) has used the 30 mile relocation provision of the National Bank Act (section 2 of the Act of May 1, 1886, 12 U.S.C. 30), to approve several transactions which have permitted national banks to move their main offices to other States but to retain branches in the States left by the main offices. Section 102(b)(2) amends the provision so that after June 1, 1997, a national bank relocating its main office to another state may maintain its branches in the first state only if those branches could have been established by a bank with its home State in the new State. However, along with the OCC's approval for the relocation, the bank would be required to obtain the Comptroller's approval under section 5155 of the Revised Statutes to continue to operate any remaining branch offices located in State other than the State of its new main office. Thus, the bank would be required to file a consolidated application with the OCC covering both aspects of the transaction; the OCC would be authorized to act on the remaining out-of-State branch aspect of the transaction only pursuant to section 5155. State banks are treated in a similar manner.

The Conferees are aware of the OCC procedures in permitting relocation across state lines. The Conferees concur with those procedures, including the application of appropriate State law and authority. The Conferees expect the OCC to continue to follow those procedures until the provisions of Title I become fully applicable on June 1, 1997.

Banks that have moved their main offices pursuant to 12 U.S.C. 30 should not be treated differently than other banks with their main offices in that state. Specifically, for purposes of section 3(d) of the Bank Holding Company, and sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act, such banks shall be able to make acquisitions and establish branches in the state to which their main office is relocated to the same extent as any other bank with its main office in that state.

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AMENDMENT TO THE HOME OWNERS LOAN ACT

The amendment made to the Home Owners Loan Act by section 102(b)(5) of the bill overturns an interpretation of that Act in *First Gibraltar Bank v. Morales*, (5th Cir., Dkt. 93-8170, decided April 29, 1994). In the case the United States Court of Appeals for the Fifth Circuit held that the Office of Thrift Supervision had the authority to issue a regulation preempting a provision in the Texas Constitution protecting homesteads of consumers in the State.

This amendment clarifies that neither the Home Owners Loan Act nor any other provision of law provides the Director of the Office of Thrift Supervision with the authority, through regulation or otherwise, to preempt Texas law in the area of homestead protection. By extension, housing creditors under the Alternative Mortgage Transaction Parity Act who were impacted by the decision in the *First Gibraltar* case also continue to be subject to Texas law in the area of homestead protection.

PROVISIONS RELATING TO DIRECT BRANCHES OF FOREIGN BANKS

Establishment of Direct Branches of a Foreign Bank Outside the Foreign Bank's Home State

Under the House bill, section 5(a) of the International Banking Act of 1978 (IBA) was amended to permit a foreign bank to establish and operate State-licensed branches, either de novo or by acquisition and merger, in any State outside its home State to the same extent that a bank chartered by the foreign bank's home State may establish such branches de novo or by acquisition and merger, respectively. A parallel provision allowed a foreign bank to establish and operate Federally-licensed branches in any State outside its home State to the same extent that a national bank from the foreign bank's home State may do so. In addition, the House bill restates the provision of current law that allows a State to permit foreign banks to establish agencies or limited branches that accept only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act to accept.

The Senate bill did not amend the IBA. As a result, the Senate bill permitted foreign banks to engage in interstate branching only if they first established or acquired a bank in the United States and then followed the same procedures applicable to U.S. Banks. The Senate adopted its

approach to address its concern that the wholesale direct branches of foreign banks enjoy competitive advantages over U.S. banks because such branches are not subject to the Community Reinvestment Act or to deposit insurance coverage and assessments.

The Conferees agreed to adopt the House structure regarding foreign banks. However, in order to address concerns regarding a level playing field between wholesale direct branches of foreign banks and domestic banks, the Conferees added provisions regarding: (a) continued application of CRA requirements to a direct branch resulting from an initial interstate entry by acquisition of a regulated financial institution; (b) revision of the regulations governing the types of deposits that may be accepted by uninsured direct branches of a foreign bank; (c) types of activities at offshore shell branches managed and controlled by U.S. branches and agencies of foreign banks; and (d) application of consumer protection laws to direct branches of foreign banks. These provisions are among those described below.

Requirement for a separate subsidiary. Section 5(a) of the IBA is amended to provide that the Federal Reserve Board or the Comptroller of the Currency may require a foreign bank to establish a separate U.S. subsidiary bank in order to engage in interstate branching if the Board or the Comptroller finds that it is the only way to verify that a foreign bank adheres to capital requirements that are equivalent to those applicable to a U.S. bank engaged in interstate branching.

Continued application of CRA requirements to a direct branch resulting from an initial interstate entry by acquisition of a regulated financial institution. The Conferees added section 5(a)(8) to the IBA to provide that in cases where a foreign bank acquires a bank or a branch of a bank, in a State in which the foreign bank does not maintain a branch, and such acquired bank was, or was part of, immediately prior to the acquisition, a regulated financial institution as defined in the Community Reinvestment Act (CRA), the CRA shall continue to apply to each branch of the foreign bank which results from the acquisition as if such branch were a regulated financial institution. The Conferees note that the requirements of section 6(c) of the IBA will still apply. The requirements of section 5(a)(8) would not apply in the case of a branch that results from such acquisition that accepts only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act to accept.

Continued authority for branches, agencies and commercial lending companies established prior to this Act. Section 5(b) of the IBA is amended to include a provision that permits foreign banks that lawfully established and operated interstate branches, agencies or commercial lending company subsidiaries before the date of enactment of this Act to continue to operate such offices or subsidiaries after the enactment of this Act.

Determining home State of foreign bank. Section 5(c) of the IBA is amended to provide that any foreign bank that operates a branch, agency, subsidiary commercial bank or commercial lending company must have a home State.

Clarification of direct branching rules in the case of a foreign bank with a domestic bank subsidiary. Section 5(d) is added to the IBA to clarify that a foreign bank may establish direct branches and agencies on an interstate basis and also own or control a U.S. subsidiary bank, and that a national or State subsidiary bank of a foreign bank may acquire, establish or operate

branches outside its home State to the same extent as any other national or State bank, respectively, from the subsidiary bank's home State.

Deposits That May Be Accepted by Uninsured Direct Branches of Foreign Banks

Revision of regulations governing types of deposits that may be accepted by uninsured direct branches of foreign banks. The IBA was amended in 1991 to prohibit a foreign bank from establishing any new branches which take domestic retail deposits that have balances of less than \$100,000 and require deposit insurance. As a result, a foreign bank must establish a U.S. subsidiary bank in order to conduct a domestic retail deposit-taking business. Regulations issued by the Federal Deposit Insurance Corporation (FDIC) and the Comptroller of the Currency under section 6 of the IBA govern the types of deposits that may be accepted by uninsured direct branches of foreign banks. To address concerns that these regulations may permit such branches to engage to some extent in domestic retail deposit-taking activity, in regard to which they are not subject to FDIC insurance coverage and assessments or to the requirements of the Community Reinvestment Act, the Conferees added a requirement that the FDIC and the Comptroller revise their regulations to ensure that foreign banking organizations do not receive an unfair competitive advantage over U.S. banking organizations.

In reviewing their regulations in accordance with this subsection, the agencies must consider whether to permit the acceptance of initial deposits of less than \$100,000 only from specified types of customers. As part of this revision, the agencies must reduce--from five percent of average branch deposits to no more than one percent--the exemption that allows such branches to accept initial deposits of less than \$100,000 from any party on a de minimis basis. In carrying out this revision, the agencies must take into account the importance of maintaining and improving the availability of credit to all sectors of the U.S. economy, including the international trade finance sector of the U.S. economy. The agencies must publish final regulations no later than twelve months after the date of enactment of this Act and may establish reasonable transition rules to facilitate any termination of any deposit-taking activities that were previously permissible.

Treatment of FDIC-insured banks chartered in Puerto Rico, Guam, American Samoa, Virgin Islands and U.S. territories. Section 6(d) of the IBA is amended to clarify that banks insured by the FDIC and chartered in any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands are not included as foreign banks for purposes of the requirement to establish a banking subsidiary to engage in a domestic retail deposit-taking business. This provision clarifies that such insured banks (which are also subject to CRA requirements) are to be treated like any other FDIC-insured bank for purposes of acceptance of retail deposits and are therefore not subject to the provisions of section 6(c).

Types of Activities at Offshore Shell Branches Managed and Controlled by U.S. Agencies and Branches of Foreign Banks

U.S. banking agencies do not regulate or supervise the activities of offshore shell branches of foreign banks, even if such branches are managed and controlled by U.S. agencies and branches of foreign banks. The Conferees wanted to avoid any potential for a foreign bank to use its U.S. branches or agencies to manage types of activities through offshore shell branches that could not be managed by a U.S. bank at its foreign branches or subsidiaries.

To address this concern, the Conferees added Section 7(k) to the IBA to provide that a U.S. branch or agency of a foreign bank may not, through an offshore shell branch that it manages or controls, manage types of activities that a U.S. bank is not permitted to manage at a foreign branch or subsidiary. Any regulations promulgated to carry out this section must be promulgated in accordance with section 13 of the IBA and must be uniform, to the extent practicable.

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Other Foreign Bank Provisions

Application of consumer protection laws to direct branches of foreign banks. Section 9(b) of the IBA is amended to affirm that direct branches and agencies of foreign banks and commercial lending company subsidiaries are, by various statutory provisions, subject to the following consumer protection laws: Electronic Funds Transfer Act, Equal Credit Opportunity Act, Expedited Funds Availability Act, Fair Credit Billing Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Home Mortgage Disclosure Act, Real Estate Settlement Procedures Act, Truth in Lending Act, Truth in Leasing Act, and Truth in Savings Act.

Foreign bank examination fees. Sections 7(c) and 10(c) of the International Banking Act state that the Federal Reserve Board shall assess the cost of any examination of a branch, agency or representative office of a foreign bank against the foreign bank. The conference report provides a three-year moratorium on any assessments under these sections.

COORDINATION OF EXAMINATION AUTHORITY REGARDING INTERSTATE BRANCHES

Section 105 permits the appropriate State bank supervisor of a host State to examine branches of out-of-State Banks to assure compliance with host State laws, including those governing banking, community reinvestment, fair lending, consumer protection and permissible activities, and to assure that the activities of the branch are conducted in a safe and sound manner.

The host State bank supervisor, or other host State law enforcement officer (if authorized under host State law) may take appropriate enforcement actions and proceedings regarding the branch.

State bank supervisors are permitted to enter into cooperative agreements to facilitate supervision of State banks operating interstate. Under the Senate-passed bill, such agreements would have been subject to approval of the appropriate Federal regulator. The House-passed bill had no requirement for approval. The Senate receded to the House on this issue. Both bills contained a provision that nothing in the section affected the authority of Federal banking agencies to examine branches of insured depository institutions, and the Conferees enclosed such a provision in the title.

BRANCH CLOSURES

The House-passed bill added a new section 42(d) to the Federal Deposit Insurance Act, setting forth a procedure for notice, comment, consultation with community leaders and a meeting of representatives of the appropriate Federal banking agency whenever an interstate bank proposes

closing a branch in a low- or moderate-income area. The Senate-passed bill contained no comparable provision.

The House provision was amended by the Conferees to specifically include other interested agencies in the required meeting in order to include the National Credit Union Administration in the meetings for the purpose of exploring the development of the use of community development credit unions.

This section does not effect the authority of an interstate bank to close a branch, or the timing of the closing.

FEDERAL RESERVE BOARD STUDY ON BANK FEES

The Federal Reserve is required to conduct an annual survey of the fees charged by banks for retail banking services. Each report shall describe any national or state trends in the cost and availability of such services. Reports are required for seven years.

PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES

In order to assure that the new interstate branching authorities provided by the Interstate Banking and Branching Efficiency Act of 1994 do not result in the taking of deposits from a community without concern for the credit needs of that community, section 107 requires each appropriate Federal banking agency to promulgate regulations effective June 1, 1997, prohibiting interstate branches from being used as deposit production offices. The regulations are to include guidelines to ensure that each interstate branch is reasonably helping to meet the credit needs of the community in which the branch operates.

The Conferees do not intend that section 109 creates any additional regulatory or paperwork burdens for any institution.

The regulations must require that if the percentage of loans made by an out-of-state bank in the host state relative to the deposits taken by the out-of-State bank in the host state is less than half the average of such percentage for all host-state banks, the appropriate federal banking agency shall review the loan portfolio of the bank and determine whether the out-of-state bank is reasonably helping to meet the credit needs of the community served by the bank in the host state. If the agency determines that it is not, it may order the branch to be closed and the bank which established the branch may not open to a new branch in that State, unless the bank provides reasonable assurances to the agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in the host state.

In making such a determination, the appropriate Federal banking agency shall consider a number of factors including whether the branch was acquired as part of the purchase of a failed or failing depository institution; whether the branch was acquired under circumstances where there was a low loan-to-deposit ratio; whether the branch has a higher concentration of commercial and credit card lending; and the ratings received by the out-of-state bank in CRA evaluations.

This provision applies to new interstate branches of national banks, state banks, and foreign banks established pursuant to this title or any amendment thereto.

COMMUNITY REINVESTMENT ACT EVALUATION OF BANKS WITH INTERSTATE BRANCHES

For each insured institution that maintains branches in two or more states, the appropriate Federal banking agency must prepare a written evaluation (pursuant to sections 807 (a), (b), and (c) of the Community Reinvestment Act) of the institution's overall CRA performance, along with separate written evaluations and ratings of the institution's CRA performance in each state in which it maintains branches. If an institution has branches in two States in a single multi-state metropolitan area, the agency will prepare a separate written evaluation of the institution's CRA performance within that metropolitan area, and adjust the state-by-state evaluations of the institution accordingly.

Each state-by-state evaluation is to present information separately for each metropolitan area (within that state) in which the institution maintains one or more branches, and separately for the nonmetropolitan area of the state if the institution has at least one branch in such non-metropolitan area.

RESTATEMENT OF EXISTING LAW

State Taxation Authority

Section 111(1) restates as part of Title I the provisions of section 7(b) of the Bank Holding Company Act of 1956 regarding state taxation authority. Section 111(2) states that nothing in the title shall be construed as affecting the existing authority of any state or political subdivision of any state to impose and maintain a nondiscriminatory franchise or other nonproperty tax on any bank, branch or bank holding company.

Applicability of Section 5197 of the Revised Statutes and Section 27 of the FDI Act

Section 111(3) specifically states that nothing in Title I affects sections 5179 of the Revised Statutes or section 27 of the Federal Deposit Insurance Act. Accordingly, the amendments made by the Interstate Banking and Branching Efficiency Act of 1994 that authorize insured depository institutions to branch interstate do not affect existing authorities with respect to any charges under section 5197 of the Revised Statutes or section 27 of the Federal Deposit Insurance Act imposed by national or state banks for loans or other extensions of credit made to borrowers outside the state where the bank or branch making the loan or other extension of credit is located.

GAO REPORT ON DATA COLLECTION

The Conferees adopted a Senate provision requiring a General Accounting Office report no later than 9 months after enactment on existing requirements for insured depository institutions to collect and report deposit and lending data and determine what modifications are needed so that interstate branching results in no material loss of information important to regulatory or congressional oversight of insured depository institutions. The House-passed bill had no similar provision.

PREEMPTION OF ARKANSAS USURY CEILING AS IT APPLIES TO CERTAIN LOANS

The Conferees adopted a Senate-passed provision preempting Arkansas usury limit for Consolidated Farm and Rural Development Act loans, while providing the State with a three-year period in which to reenact its limitation. The House-passed bill had no similar provision.

Title II--General Provisions

STATUTE OF LIMITATIONS

Section 201 of the bill as adopted by the conference would permit the FDIC or the RTC, as conservator or receiver of a failed depository institution, to `revive' under certain circumstances, certain tort claims that had expired under a State statute of limitations within five years of the appointment of the conservator or receiver. This provision does not affect other applicable State laws concerning the running or the tolling of statutes of limitations (by reason of adverse domination or otherwise), nor does it alter section 11(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(k), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The revival of expired claims is an extraordinary remedy because it is a form of the retroactive application of law which the courts and Congress have generally disfavored. Accordingly, section 201 would limit this extraordinary remedy to claims arising from an egregious class of conduct, i.e., fraud, intentional misconduct resulting in unjust enrichment, and intentional misconduct resulting in substantial loss to the institution. This three-pronged, fraud/intentional misconduct standard is precisely the same as the one that Congress adopted last year, after considerable debate, with respect to a retroactive statute of limitations extension in the Resolution Trust Corporation Completion Act of 1993.

As with last year's reauthorization of the RTC, the intentional misconduct standard for revival in this provision is not intended to apply to claims arising from negligence, whether pleaded as simple, ordinary, or gross negligence. Claims arising from such negligent conduct by directors, officers, and outside professionals, such as negligent approval or review of loan applications, do not warrant the extraordinary remedy of revival if it is in the contravention of State law.

Section 201 would recognize that there is a level of misconduct which justifies Congressional actions to retroactively set aside a State statute of limitations, particularly where, for example, this misconduct involves individuals who improperly manipulated institutional affairs to prevent themselves from being brought to justice before the State period of limitations expired. This level of misconduct is reflected in particular forms of intentional behavior. The intentional misconduct standard is written to specifically include conduct such as self-dealing that result in unjust enrichment or a substantial loss to the institution, manipulation by institution insiders that results in a running of a statute of limitations, falsifying financial records that disguises increased financial loss, and conspiracy to violate banking rules or regulations.

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SENSE OF THE SENATE REGARDING EXPORT CONTROLS

The Conferees adopted a Senate provision expressing the Sense of the Senate that the President should work toward establishment of a multilateral system to prevent acquisition by rogue regimes of products and technologies which could pose a threat to the national security of the United States. The House bill contained no similar provision.

AMENDMENT RELATING TO SILVER MEDALS FOR PERSIAN GULF WAR VETERANS

The purpose of the LaRocco Amendment is to permit the Secretary of the Treasury to begin production of the Persian Gulf silver medals, which were authorized by the 102nd Congress and signed into law by President Bush. These medals are in recognition of service rendered to the nation by members of the U.S. Armed Forces who served in the Gulf War. The amendment will allow the Secretary of the Treasury to use funds that have already been generated through ongoing sales of bronze replicas to begin production and continue so long as funds remain available.

COMMEMORATION OF 1995 SPECIAL OLYMPICS WORLD GAMES

The 1995 Special Olympics World Games Commemorative Coin Act authorizes the issuance of 800,000 one-dollar silver coins, which will be emblematic of the 1995 Special Olympics World Games. The coins will be issued during the period beginning on January 15, 1995 and ending on December 31, 1995, and will result in no net cost to the United States Government. The dates of issuance are not intended to conflict with any other coins authorized under this Act.

The 1995 Special Olympics World Games will be held July 1-9, 1995 in New Haven, CT and will attract more than 6,500 athletes from around the world. Funds raised through the ten dollar surcharge on the sale of each coin will be used to: (1) provide a world-class sporting event for athletes with mental retardation; (2) demonstrate to a global audience the talents, dedication and courage of persons with mental retardation; and (3) underwrite the cost of staging and promoting the 1995 Special Olympics World Games.

NATIONAL COMMUNITY SERVICE COMMEMORATIVE COINS

The National Community Service Commemorative Coin Act authorizes the issuance of 500,000 one-dollar silver commemorative coins, which will be emblematic of community service volunteers. The coins will be issued for a period of no less than six months, and no more than 12 months, beginning no later than September 1, 1996, and will result in no net cost to the United States Government.

Funds raised through the ten dollar surcharge on the sale of each coin will be paid to the National Community Service Trust for the purpose of funding innovative community service programs at American universities, including the service, research, and teaching activities of faculty and students involved in such programs.

ROBERT F. KENNEDY MEMORIAL COMMEMORATIVE COINS

The Robert F. Kennedy Memorial Commemorative Coin Act authorizes the issuance of 500,000 one-dollar silver commemorative coins, which will be emblematic of the life and work of former Attorney General and United States Senator Robert F. Kennedy. The coins will be issued for a

period of no less than six months, and no more than 12 months, beginning no later than January 1, 1998, and will result in no net cost to the United States Government.

Funds raised through the ten dollar surcharge on the sale of each coin will be used to improve the endowment of the Robert F. Kennedy Memorial.

UNITED STATES MILITARY ACADEMY BICENTENNIAL COMMEMORATIVE COIN
This legislation provides for the minting of coins to commemorate the bicentennial of the U.S. Military Academy located in West Point, New York. The Academy will celebrate its bicentennial on March 16, 2002.

The Military Academy has provided our nation with the core of its military officers. It was founded in 1802, principally as a result of the vision of George Washington. West Point has been the source of most of our Nation's great military leaders, like Robert E. Lee, Ulysses S. Grant, John Pershing, Dwight Eisenhower, and Norman Schwarzkopf. However, West Point is much more than a training school for military leaders: It has always been a national bedrock of values which are best expressed by the Academy's motto, 'Duty, Honor, Country.'

In the year 2002, the United States Mint will issue 500,000 silver dollars to commemorate West Point's bicentennial. The silver dollars will be struck at the United States Bullion Depository at West Point. A \$10 surcharge will be added to the cost of the coins. The money raised from the surcharges will be used by the Association of Graduates to provide direct support to the academic, military, physical, moral, and ethical development programs of the Corps of Cadets at the United States Military Academy. The Association of Graduates provides important activities and programs for the Cadets in hopes of helping each young person adjust to the tough and demanding four years at West Point. These activities and programs are not funded by the taxpayers. These coins will be minted at no net cost to the government.

UNITED STATES BOTANIC GARDEN COMMEMORATIVE COINS

The United States Botanic Garden Commemorative Coin Act authorizes the issuance of 500,000 one-dollar silver commemorative coins, which will be emblematic of the 175th anniversary of the founding of the United States Botanic Garden. Although the coins will be issued beginning on January 1, 1997, and ending on December 31, 1997, the coins shall be inscribed with the years 1820-1995 in order to properly commemorate the Garden's 175th anniversary. No other dates shall appear on the coin. The issuance of these coins will result in no net cost to the United States Government.

MOUNT RUSHMORE COMMEMORATIVE COINS

In 1990, legislation was passed directing the U.S. Treasury to mint a series of Mount Rushmore commemorative coins in 1991. The legislation specified that 50 percent of the surcharge from each coin sold was to be directed to the Mount Rushmore Society to preserve the Memorial and upgrade its facilities. The other 50 percent of the surcharge was to be directed to the U.S. Treasury for the purposes of deficit reduction. At the time the legislation was passed, it was

anticipated that all of the coins would be sold, providing revenues of \$18,750,000 each of the Mount Rushmore Society and the U.S. Treasury.

Unfortunately, sales of the Mount Rushmore Commemorative Coins generated only \$12 million. This left the Mount Rushmore Society with revenues of only \$6 million--less than a third of what was anticipated and not enough to fund the Monument's preservation and improvement. This provision would direct the first \$18,750,000 in surcharges to the Society, and allocate the remainder to the U.S. Treasury.

FINANCIAL SERVICES COMMISSION

The Conferees adopted a modified version of a Senate provision requiring a study of the United States financial services system. The House bill contained no similar provision.

The provision directs the Secretary of the Treasury to conduct a study of the strengths and weaknesses of the U.S. financial services system in meeting the needs of users of the system. The Secretary is to appoint between 9 and 14 members to an Advisory Commission on Financial Services, with which the Secretary is to consult in conducting the study. The Secretary is also to consult with enumerated federal agencies and officials in conducting the study. The Secretary is to report the results of the study and any recommendations not later than 15 months after the date of enactment of the legislation.

FLEXIBILITY IN CHOOSING BOARDS OF DIRECTORS

The Conferees agreed to reduce from two-thirds to a majority the proportion of the board of directors of a national bank who must reside in the same state in which the bank is located (or within 100 miles of the main office).

From the Committee on Banking, Finance and Urban Affairs, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,

STEVE NEAL,

JOHN J. LAFALCE,

BRUCE F. VENTO,

CHARLES SCHUMER,

BARNEY FRANK,

PAUL E. KANJORSKI,

JOSEPH KENNEDY,

JAMES LEACH,

BILL MCCOLLUM,

MARGE ROUKEMA,

DOUG BEREUTER,

TOM RIDGE,

As additional conferees from the Committee on Agriculture, for consideration of sec. 109 of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,

CHARLIE STENHOLM,

HAROLD L. VOLKMER,

TIMOTHY J. PENNY,

TIM JOHNSON,

PAT ROBERTS,

LARRY COMBEST,

WAYNE ALLARD,

As additional conferees from the Committee on the Judiciary, for consideration of secs. 101-03 of the House bill, and title II and secs. 102-03 of the Senate amendment, and modifications committed to conference:

R.L. MAZZOLI,

BILL HUGHES,

DAN GLICKMAN,

RICK BOUCHER,

JOHN BRYANT,

HAMILTON FISH,

CHAS T. CANADY,

BOB GOODLATTE,

Managers on the Part of the House.

.

DON RIEGLE,

PAUL SARBANES,

CHRISTOPHER DODD,

JIM SASSER,

Managers on the Part of the Senate.