S. REP. 103-169, S. Rep. No. 169, 103RD Cong., 1ST Sess. 1993, 1993 WL 444316, 1994 U.S.C.C.A.N. 1881 (Leg.Hist.)

P.L. 103–325, ***1881** RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

THE COMMUNITY DEVELOPMENT, CREDIT ENHANCEMENT, AND REGULATORY IMPROVEMENT ACT OF 1993

DATES OF CONSIDERATION AND PASSAGE

House: November 21, 1993; August 4, 1994
Senate: March 17, August 9, 1994
Cong. Record Vol. 139 (1993)
Cong. Record Vol. 140 (1994)
Senate Report (Banking, Housing, and Urban Affairs Committee) No. 103–169,
Oct 28, 1993 (To accompany S. 1275)
House Conference Report No. 103–652,
Aug. 2, 1994 (To accompany H.R. 3474)

RELATED REPORTS

House Report (Banking, Finance and Urban Affairs Committee) No. 103–414,
Jan. 26, 1994 (To accompany H.R. 3191)
House Report (Banking, Finance and Urban Affairs Committee) No. 103–438,
Mar. 21, 1994 (To accompany H.R. 3235)

SENATE REPORT NO. 103–169
October 28, 1993
[To accompany S. 1275]

***1885** INTRODUCTION

On September 21, 1993, the Senate Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported a bill, the “Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993,” to foster community development, encourage lending to small businesses, remove unnecessary paperwork on depository institutions, and protect consumers. The Committee voted to report the bill to the Senate by a vote of 18 to 1.

CONTENTS

TITLE BY TITLE SUMMARY

TITLE I: COMMUNITY DEVELOPMENT AND CONSUMER PROTECTION

Subtitle A: Community Development Banking and Financial Institutions Act

This subtitle is designed to revitalize distressed communities by improving access to capital in these communities. It creates the Community Development Financial Institutions Fund. The Fund will promote the economic development of distressed communities by providing financial and technical assistance to new and existing community development financial institutions.

The Fund will be directed by an Administrator appointed by the President and confirmed by the Senate. A five member Advisory Board will consist of representatives of community groups, local and regional governments, community development organizations, and the banking industry. The subtitle authorizes $382 million over 4 years.

***1886** Subtitle B: Home ownership and equity protection

This subtitle amends the Truth in Lending Act to provide new consumer protections for non-acquisition mortgages with high fees or interest rates. The subtitle defines these mortgages as “high cost mortgages.” For all high cost mortgages, lenders must provide a separate disclosure containing the annual interest rate, monthly payment and a warning that the borrower could lose the home. The disclosure must be provided at least 3 days before settlement, creating an additional “cooling off” period.

The legislation generally prevents lenders from including certain potentially abusive terms, such as prepayment penalties, in high cost mortgages. Furthermore, civil liability is established for creditors who violated the Act, and subsequent assignees of such loans will be subject to any claims or defenses that could be raised against the originator.

TITLE II: SMALL BUSINESS CAPITAL FORMATION

Subtitle A: Small business loan securitization

This subtitle encourages securitization of small business loans, much the way that home mortgages have been securitized. The legislation contemplates that financial institutions will originate loans to small businesses, and then sell them to an entity that would issue securities to investors. The subtitle makes changes to the Federal securities laws that parallel the Secondary Mortgage Market Enhancement Act of 1984. These will allow issuers sufficient time to pool and sell securities, and to file a single registration statement with the Securities and Exchange Commission.

The subtitle provides for an exemption under the Employee Retirement Income Security Act, similar to that for home mortgages, allowing an institution that manages pension funds to securitize small business loans. The subtitle also directs the Secretary of the Treasury to apply the same tax treatment available for mortgage backed securities to small business loan securities.

The subtitle also changes bank capital requirements for small business loans sold “with recourse”–that is, where the bank remains liable for a portion of any losses on the loan. This should facilitate securitization of small business loans while maintaining bank safety and soundness.

Subtitle B: Small business capital enhancement

Thirteen States have adopted Capital Access Programs. These Programs are designed to encourage lenders to make loans to small- and medium-sized businesses that they might not make otherwise.

Lenders may choose to participate in a Program. For each loan enrolled in a Program, the borrower and lender pay a premium into a loan loss reserve fund. The State then matches that contribution. The loan loss reserve fund protects the lender against loss on the loan. Participating lenders assume the risk of loss on their loans, if the losses exceed the total contributions in the reserve fund. Unlike***1887** a guarantee program, the government is not exposed to the risk of the entire loan.

This subtitle authorizes $50 million in Federal funds to match State contributions to Capital Access Programs. This will help States that already have such Programs and encourage other States to adopt such Programs.

TITLE III: PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

Title III contains a number of provisions to improve the functioning and the efficiency of the Federal banking agencies. Within 2 years, examinations will be coordinated, and each institution and its affiliates will receive a unified exam conducted by one regulator. This will eliminate the costs to banks of duplicative examinations. Each agency must establish a regulatory appeals system. Also within 2 years, the Federal banking agencies must conduct a top-to-bottom review of regulations, removing inconsistent, outmoded, and duplicative mandates.

Title III also contains a number of amendments to existing laws that will reduce the paperwork that depository institutions must cope with. For example, currently depository institutions with assets of less than $100 million are exempt from the requirement of annual inspection and instead must be examined on an 18 month cycle. Title III raises the threshold to $250 million for this 18 month cycle. Title III also amends the Real Estate Settlement Procedures Act to exempt any loans that are made for commercial, agricultural or governmental purposes. Banks will be allowed to file certain reports electronically.

LEGISLATIVE HISTORY

TITLE I: COMMUNITY DEVELOPMENT AND CONSUMER PROTECTION

A. Community Development Banking and Financial Institutions Act

On July 21, 1993 the Chairman of the Committee on Banking, Housing, and Urban Affairs, Senator Donald W. Riegle, Jr., introduced S. 1275, the Community Development Banking and Financial Institutions Act of 1993. The bill was cosponsored by Senators Paul Sarbanes, Christopher Dodd, John Kerry, Barbara Boxer, Ben Nighthorse Campbell, Carol Moseley-Braun, and Bill Bradley.

This bill became the vehicle for the Senate Banking Committee's community development, credit enhancement, and regulatory improvement legislation. Most of the provisions in S. 1275 as introduced were incorporated in Title I, subtitle A of the S. 1275 Committee Print, which was publicly released on September 21, 1993. The Banking Committee marked up the S. 1275 Committee Print on September 21, 1993. The vote to report the bill was 18 to 1, with 11 Democrats and 8 Republicans voting in favor. Voting to report the bill were Chairman Riegle and Senators Sarbanes, Dodd, Sasser, Shelby, Kerry, Bryan, Boxer, Nighthorse Campbell, Moseley-Braun, Murray, D'Amato, Bond, Mack, Faircloth, Bennett, Roth, and Domenici. Opposed was Senator Gramm.

***1888** The Banking Committee's action followed 3 hearings on community development lending. Testifying on “Community Development Banking” on February 3, 1993 were Milton Davis, South Shore Bank, Illinois; Lyndon Comstock, Community Capital Bank, New York; Steven Lopez, Southside Bank, Grand Rapids, Michigan; Edward McNamara, Wayne County Executive, Michigan; Robert Jackson, Quitman County Federal Credit Union, Mississippi; Ron

Phillips, Coastal Enterprise, Maine; Pauline Nunez-Morales, New Mexico Community Loan Fund; and Michael Swack, Institute of Cooperative Community Development, New Hampshire.

Testifying on the “Community Development Financial Act of 1993 and Community Reinvestment Act regulatory reforms” on July 15, 1993 were Senator Bill Bradley, New Jersey; Representative Bobby Rush, Illinois; Lloyd Bentsen, Secretary of the Treasury; Mike Espy, Secretary of Agriculture; Ron Brown, Secretary of Commerce (via satellite); and Eugene Ludwig, Comptroller of the Currency.

Testifying on the “Community Development Financial Institutions Act of 1993” on September 8, 1993 were Henry Cisneros, Secretary of Housing and Urban Development; Frank Newman, Under Secretary for Domestic Finance, Department of Treasury; Jeremy Nowak, Executive Director, Delaware Valley Community Reinvestment Fund, representing the Community Development Financial Institutions Coalition; Deepak Bhargava, Legislative Director, ACORN, representing the Center for Community Change, Consumer's Union, Consumer Federation of America, and National Council for LaRaza; Paul S. Grogan, President, Local Initiatives Support Corporation; and James Chessen, Chief Economist, American Bankers Association.

B. Home ownership and equity protection

On May 7, 1993 the Chairman of the Committee on Banking, Housing, and Urban Affairs, Senator Donald W. Riegle, Jr., together with Senator Alfonse D'Amato, introduced S. 924, the Home Ownership and Equity Protection Act of 1993. The bill was cosponsored by Senators Christopher Bond, Barbara Boxer, Christopher Dodd, and Carol Moseley-Braun. Most of the provisions in S. 924 as introduced were incorporated in Title I, subtitle B of the S. 1275 Committee Print.

The Banking Committee's action followed two hearings on home equity lending. Testifying on “Reverse Redlining: Problems in Home Equity Lending” on February 17, 1993 were Scott Harshbarger, Attorney General, Commonwealth of Massachusetts; Kathleen Keest, National Consumer Law Center; Terry Drent, Ann Arbor Community Development Department, Michigan; John Hamill, President, Fleet Bank of Massachusetts; Annie Diggs, Resident, Augusta, GA; Eva Davis, Resident, San Francisco, CA; John Long, Attorney, Dye, Tucker, Everitt, Wheale & Long; and Bruce Marks, Union Neighborhood Assistance Corporation.

Testifying on “S. 924, the Homeownership and Equity Protection Act of 1993” on May 19, 1993 were Eugene Ludwig, Comptroller of ***1889** the Currency; Lawrence B. Lindsey, Governor, Federal Reserve System; Terry Drent, Ann Arbor Community Development Department, Michigan; Dianne Lopez, Senior Vice President, First Interstate Bank, TX; Margot Saunders, National Consumer Law Center; Robert Elliott, Group Executive, Household International, IL; and Michelle Meier, Consumers' Union.

TITLE II: SMALL BUSINESS CAPITAL FORMATION

A. Small Business Loan Securitization and Secondary Market Enhancement Act

On February 17, 1993 the Ranking Member of the Committee on Banking, Housing, and Urban Affairs, Senator Alfonse D'Amato, introduced S. 384, the Small Business Loan Securitization and Secondary Market Enhancement Act of 1993. The bill was cosponsored by Senators Christopher Dodd, Richard Bryan, Robert Dole, Christopher Bond, Phil Gramm, Connie Mack, Lauch Faircloth, Robert Bennett, Pete Domenici, Richard Shelby, John Chafee, Don Nickles, Kent Conrad, Frank Murkowski, Ted Stevens, Joseph Lieberman, William Cohen, Larry Pressler, Slade Gorton, Nancy Landon Kassebaum, John Danforth, James Jeffords, Richard Lugar, Dan Coats, Trent Lott, Hank Brown, Mitch McConnell, Malcolm Wallop, Alan Simpson, Conrad Burns, Dennis DeConcini, John Kerry, Bob Packwood, Judd Gregg, Orrin Hatch, Dianne Feinstein, Harry Reid, and Strom Thurmond. Most of the provisions in S. 384 as introduced were incorporated in Title II, subtitle A of the S. 1275 Committee Print.

The Banking Committee's action followed 2 hearings on small business lending and investment initiatives. Testifying on “Small Business Access to Capital” on March 4, 1993 were John C. Rennie, President, National Small Business United, and Pacer Systems, Inc., Billerica, Massachusetts; Gary Baker, Baker Investment Group, and Board Member, National Small Business United; Jeff Widen, President, Total Foam Inc.; David Gladstone, President, Allied Capital Corp., representing National Association of Business Development Companies and National Association of Small Business Investment Companies; Patricia M. Cloherty, Senior Vice President and General Partner, Patricof & Co. Ventures, Inc., representing National Venture Capital Association; Thomas N. Richmond, Jr., First Vice President, McDonald & Co. Securities, Inc.; Patricia Jehle, Senior Managing Director, Bear Stearns, representing Public Securities Association; Barry Guthray, Director, Massachusetts Division of Securities, and President, North American Securities Administration Association.

Testifying on “Encouraging Small Business Lending and Investment” on September 9, 1993 were Frank Newman, Under Secretary for Domestic Finance, Department of Treasury; John Laware, Governor, Federal Reserve System; Carter Beese, Commissioner, Securities and Exchange Commission; Edward L. Yingling, Executive Director of Government Relations, American Bankers Association; Bradford T. Nordholm, Vice President, National Cooperative Bank, D.C.; and James G. Zafris, Jr., Chief Executive Officer, Danvers Savings Bank, representing Savings & Community Bankers of America.

***1890** B. Small Business Capital Enhancement

On September 9, 1992 the Chairman of the Committee on Banking, Housing, and Urban Affairs, Senator Donald W. Riegle, Jr., introduced S. 3222, the Small Business Capital Enhancement Act of 1992. No Committee action was taken in the 102nd Congress.

On March 2, 1993 Chairman Riegle introduced a nearly identical bill, S. 478, the Small Business Capital Enhancement Act of 1993. This bill was cosponsored by Senators Christopher Dodd, Joseph Lieberman, and Robert Bennett.

The Banking Committee's action followed two hearings on small business lending and investment initiatives. (Refer to Title II, subtitle A for list of hearings.)

TITLE III: PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

On January 28, 1993 Senator Richard C. Shelby of Alabama and others introduced S. 265, the Economic Growth and Regulatory Paperwork Reduction Act of 1993. Parts of this measure were incorporated in Title III of the S. 1275 Committee Print.

On June 17, 1993 the Ranking Member of the Committee on Banking, Housing, and Urban Affairs, Senator Alfonse D'Amato introduced S. 1124, the Depository Institutions Regulatory Improvements Act of 1993. This bill was cosponsored by Senators Christopher Bond, Richard Shelby, Robert Bennett, Robert Dole, Pete Domenici, and Connie Mack. Parts of this measure were incorporated in Title III of the S. 1275 Committee Print.

On June 24, 1993 Senator Robert Dole of Kansas, together with Senator Alfonse D'Amato, introduced S. 1151, the Credit Crunch Relief Act of 1993. Parts of this measure were incorporated in Title III of the S. 1275 Committee Print.

TITLE I: COMMUNITY DEVELOPMENT AND CONSUMER PROTECTION

SUBTITLE A: COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT

A. INTRODUCTION

On July 15, 1993, President Clinton announced a comprehensive initiative designed to facilitate increased community development activity by mainstream and community development financial institutions. This initiative has two components. First, it will improve implementation of the Community Reinvestment Act (CRA) by Federal bank regulatory agencies. Second, it will promote the creation of new and the expansion of existing community development financial institutions through the Community Development Financial Institutions Fund.

1. Capital access problems

During the past four years, the Committee on Banking, Housing and Urban Development has held numerous hearings on the crisis in our nation's urban, rural and Native-American communities and the problems associated with lack of access to credit and investment capital. Testimony before the Committee has indicated that access to credit and equity capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing ***1891** neighborhoods, and enhancing local economies. On September 8, 1993, Housing and Urban Development Secretary Henry G. Cisneros stated before the Committee that “no tool is more essential for empowerment than capital*** [and] no combination of federal, state and local government programs alone can generate enough dollars to handle all of the challenges we face in urban revitalization. Private sector investment is absolutely critical to accomplishing the tasks required.”

Despite the importance of capital, recent evidence suggests that there are significant capital gaps caused by discrimination and redlining, lack of expertise in community lending, and the special characteristics of the community development credit market:

The Federal Reserve Board's study of the 1991 Home Mortgage Disclosure Act data indicates that African Americans are twice as likely as whites of the same income to be rejected for a mortgage loan and Latino applicants are 1.4 times as likely to be rejected as whites.

A Federal Reserve Bank of Boston study documented that, after controlling for all legitimate credit concerns, minority applicants are still 60% more likely than white applicants to be rejected when requesting mortgage loans.

A General Accounting Office study revealed that the number of mortgage loans purchased by Fannie Mae and Freddie Mac per homeowner declines as the percentage of minorities in the neighborhood increases.

“There are many factors which contribute to problems of credit access in under-served communities,” Deepak Bhargava of ACORN testified on September 8, 1993, “including discrimination on the basis of race and ethnicity, unfounded prejudices or stereotypes about the risk of lending in particular neighborhoods, and a lack of expertise in community lending on the part of lenders.” John Taylor, executive director of the Community Reinvestment Coalition indicated in written testimony submitted to the Committee on September 8, 1993 that “[i]f a credit-worthy, working class person does not have access to business financing, then he/she will most assuredly never be able to successfully launch or expand his/her business. Our experience indicates that minorities have severe problems in gaining access to business financing regardless of income.”

2. Role of mainstream lenders

The Committee believes that a federal community development policy should build upon the roles played by all existing lending institutions and must recognize that mainstream lenders will continue to be the major supplier of credit for community development activities. Community groups estimate that banks have committed about $35 billion since 1977 in lending and equity investment in traditionally under-served communities as a result of Community Reinvestment Act (CRA) agreements reached with community groups as well as unilateral action. A significant part of this investment has been channeled through approximately 110 bank and bank holding company community development corporations that have been created in the last 25 years. Nonetheless, the credit gap for small businesses and affordable housing, especially in poor and ***1892** minority communities, indicates that community credit needs have still not been fully met.

Despite some successes of CRA in generating community lending and investment activity, regulatory enforcement of CRA and complementary anti-discrimination statutes has been less than fully effective. The Committee supports the Administration's current efforts to revamp implementation of the Community Reinvestment Act. The Administration's CRA reform effort is scheduled for completion in early 1994. At the President's request, regulators are actively reviewing CRA enforcement to shift its focus to performance and minimize paperwork burden. It is anticipated that regulators will clarify CRA performance standards and make them more objective, as well as reform regulations and supervision to improve performance. To date, regulators have held seven hearings and heard from 200 witnesses in cities including Washington, DC, San Antonio, Los Angeles, Albuquerque, New York, Chicago, and Henderson (North Carolina). Regulators are soliciting recommendations for changes from the public, community groups, and the banking and thrift industries. The Committee supports these efforts and believes improved CRA enforcement should be complemented with vigorous enforcement of anti-discrimination laws, including active cooperation between financial institution regulators, and the Departments of Housing and Urban Development and Justice.

3. Market needs in distressed communities and capital gaps

The unique character of the credit market in low income and minority communities may be a factor impeding the flow of development capital. The experience of financial institutions is that lending and investment in distressed communities often requires small loans with flexible terms, non-standard credit criteria, and intensive supportive services which, in many instances, may result in higher administrative costs and lower rates of return. James Chessen, chief economist for the American Bankers Association testified on September 8, 1993 that “community development activities often require more than just lending money: they need, for example, technical assistance, formation of partnerships with community groups and government agencies, flexible credit policies, accessible secondary markets, the ability to provide other financial services, long-term involvement, and more.”

Community development requires a range of lending and investment products responding to different needs that should be provided by both mainstream and community development financial institutions working cooperatively. Treasury Secretary Lloyd Bentsen stated in July 15, 1993 that “the Administration's community banking initiative is not intended to substitute for existing CRA requirements; rather, it is intended to complement those requirements.” Experience with existing community development financial institutions has shown that these institutions typically provide products and services that are not available to distressed communities from other sources. Jeremy Nowak, executive director of the Delaware Valley Reinvestment Fund explained in testimony on September 8, 1993, that,

> CDFIs (community development financial institutions) fill market niches that conventional lenders do not serve ***1893** fully or at all. Part of the confusion that has surrounded the President's CDFI legislation is a misperception that CDFI and conventional lenders–particularly bank CDCs–serve much the same markets. In fact, their markets are complementary, and just as CDFIs can not fill the credit needs in the market the conventional lenders serve, the conventional lenders can not by themselves fill the market we serve.

Mainstream financial institutions often use highly standardized factors in underwriting and credit assessment that may discourage investment in many distressed communities. Paul Grogan, president of the Local Initiatives Support Corporation, in testimony before the Committee on September 8, 1993 stated,

> As much as traditional financial institutions can do, they cannot do everything. Their operations are driven by standardization, collateral requirements, and scale. These factors permit them to minimize transactions costs and contribute to the efficiency of the banking system overall. There are many community development loans that meet these requirements, and traditional financial institutions need to make more of them. But some loans are too small, too risky, early-stage, or simply too idiosyncratic to expect traditional financial institutions to make on a regular basis *** nontraditional lending is essential to meet certain community credit needs and to prime the pump for traditional lending.

4. Role of community development financial institutions

Over the last three decades, a variety of community-based organizations have evolved to provide credit, technical assistance and services to promote revitalization and improve access to capital and basic financial services in distressed communities. These institutions include community development banks, community development credit unions, community development loan funds, non-profit community development corporations, many minority-owned lending institutions, and micro-enterprise lenders.

The success of community-based financial institutions has spurred much interest within the Congress in recent years. In 1988, the Rouse-Maxwell Task Force on Affordable Housing recommended that a national demonstration program be established to replicate the success of the South Shore Bank in Chicago. As part of the Housing and Community Development Act of 1993, the Congress enacted such a program.

a. Advantages of CDFIs

Community development financial institutions, which are specifically dedicated to revitalization of distressed areas, have a significant capacity and commitment to underwrite nonstandard loans. This flexibility is, in part, due to patient capital invested by benevolent investors, foundations, charitable organizations, and public entities. Community development financial institutions have proven highly successful in tailoring loan products to meet the need of low-income and minority communities. In many instances, these institutions***1894** are innovators of loan products for nonstandard transactions which are eventually adopted by mainstream lending institutions. These institutions have also been successful in promoting community revitalization by providing neighborhoods and other areas that have become disconnected from the mainstream social and economic system with a financial institutional presence that is known and trusted within that community.

Access to credit is not the only reason community development financial institutions have been successful in affecting change in distressed communities. These institutions also provide a comprehensive array of service intended to build the capacity of borrowers and community institutions and catalyze revitalization. Jeremy Nowak explained on September 8, 1993 that,

> It is a vision of institutional and economic evolution, and not just credit provisions [which make community development financial institutions successful]. It is more than the sum of individual loans in low income census tracts. It's the fact that these CDFIs are developing the capacity of institutions and individuals within communities to prove their social and economic prospects.

Evidence presented before the Committee indicates that community development financial institutions have proven themselves effective in filling credit gaps and developing comprehensive revitalization strategies. “Unlike the traditional leader,” state Secretary Bentsen, “the CDFI looks beyond the marginal benefits of discrete transactions to the institution itself. Instead, the CDFI bases its transactions on the collective benefit provided to entire communities.” Milton O. Davis, president of South Shore Bank of Chicago explained to the Committee on February 3, 1993 that, “revitalizing such communities requires recognition that disinvestment is itself a market phenomenon and, consequently, will only be reversed by fundamentally reinvigorating local markets Positive community development is a long term partnership between residents who care about their communities and financial institutions with similar motivations.”

b. Types of CDFIs

Currently, there are three community development banks (CDBs) in the United States–South Shore Bank (Chicago, IL), Southern Development Bancorporation (Arkansas), and Community Capital Bank (Brooklyn, NY). CDBs promote revitalization in a comprehensive manner. Two of the CDBs are part of holding companies. The holding companies consist of several subsidiaries often including a federally-insured depository institution, a for-profit real estate development company, a Small Business Administration-approved investment company, or other affiliates that provide development services, such as small business counseling. Cumulatively, the existing CDBs have financed over $40 million in loans to approximately 1,100 small businesses and financed or developed 10,150 units of affordable housing.

Community Development Credit Unions (CDCUs) are financial cooperatives that have a majority of membership consisting of low income persons. CDCUs offer financial services generally unavailable***1895** in low income communities

CDCUs have two roles: (1) meeting the financial needs of their members (via affordable basic share accounts, share drafts and check cashing); and (2) promoting local community development through lending activities. The National Credit Union Administration reports that there are almost 150 community development credit unions nationwide that serve lower income neighborhoods. The National Association of Community Development Credit Unions reports that thirty-five percent of member credit union households have incomes less than $10,000, and 70% have incomes less than $20,000. Most CDCUs have assets between $500,000 to $1,000,000 and serve 500 to 1,000 members. The Center for Community Self-Help (Durham, North Carolina) provides a good example of how a CDCU can promote development in a distressed community.

Some minority-owned lending institutions are extensively involved in community development activities. Minority-owned lenders are institutions the majority of whose stockholders are minority individuals. The National Bankers Association reports that there are approximately 100 minority banks in the United States representing more than 1 million depositors and $13.6 billion in assets. Investment by some minority-owned banks in minority neighborhoods is estimated to exceed seventy-percent of their portfolios. These institutions provide lending and financial services in neighborhoods that often are not adequately served by other financial institutions.

Community Development Loan Funds (CDLFs) are non-profit revolving loan funds dedicated to serving the development capital needs of distressed communities. They offer a mechanism for socially-conscious investors and community activists to provide capital to credit-needy communities. There are currently 41 CDLFs across the nation. CDLFs have made more than $88 million in loans and attracted more than $643 million in additional capital from public and private sources over the past five years. These efforts have helped create 14,000 affordable housing units and 3,700 jobs that primarily benefit low income people. CDLFs are capitalized at more than $73 million, with over 10% in equity capital. The median capital base of CDLFs is $900,000.

Micro-enterprise funds issue credit for very small entities that mainstream lenders often find unprofitable to serve. A micro-enterprise is generally considered to be a business with five or fewer employees, at least one of whom is the owner of the business. The Association for Enterprise Opportunity estimates there are approximately 150 micro-lending programs across the nation. These programs enable small enterpreneurs–generally low income persons, minorities and women–to obtain start-up capital.

Community development corporations (CDCs), which first emerged in the 1960s, have become a powerful force in revitalizing distressed neighborhoods. Many of these community-based organizations develop affordable housing and small businesses, as well as operate loan funds and invest in housing and community development projects. The nation's 2,000 CDCs have developed over 320,000 units of affordable housing, created or saved 3,500 businesses, created and retained almost 90,000 jobs, and developed ***1896** 17.4 million square feet of commercial and industrial space since the 1960s.

Multi-Bank Community Development Corporations (MBCDCs) are for-profit and non-profit organizations established for the purpose of promoting community development by pooling the investments of banks, thrifts and other investors. The Bank CDC Coalition estimates that there are approximately 40 active MBCDCs in operation in the United States. Typically, MBCDCs consist of 5 to 10 institutions that seek to engage in lending and investment activities that insured depository institutions may be prohibited from engaging in directly. Approximately three-quarters of the active MBCDCs are focused on small business and economic development lending and are capitalized at an estimated $40 million.

c. Small scale of CDFIs

Despite the success of community development financial institutions in reaching and revitalizing distressed markets, they remain few in number and small in scale. “Lack of equity capital is the single greatest barrier to the growth and development of CDFIs at all levels,” state Pauline Nunez-Morales, executive director of the New Mexico Community Loan Fund in testimony before the Committee on February 3, 1993. This point was echoed in testimony the same day by Robert Jackson, director of the Quitman County Federal Credit Union, who indicated that, “(d)espite all the good work that CDCUs are doing, our impact has been limited by our small size. Most CDCUs and other community development lenders will need to be bigger institutions in order to have a meaningful impact on the credit crisis." This problem is created, explained Lyndon Comstock, president of Community Capital Bank in Brooklyn, New York in written testimony submitted to the Committee on September 8, 1993 because "conventional Wall Street sources of equity aren't available to CDFIs."

"Market forces can be restored in under-invested communities if the level of institutional capacity is sufficient for the task at hand," indicated Milton Davis. As a means of achieving this goal, Pauline Nunez-Morales suggested, "(a) performance-based lending and grant program should be the model used to create a national network of community development financial institutions. It fosters discipline in business activities while allowing institutions the flexibility to provide loan products and related services that are appropriate to the communities they serve." These principles were incorporated into the Clinton Administration's legislative proposal. Secretary Bentsen stated that "a sustained and comprehensive effort must be made to introduce and/or establish the institutional, financial, and human wherewithal for economically distressed communities to gain entry into 'mainstream' America."

The Committee believes that expansion and formation of community development financial institutions should be encouraged. Such institutions promise to combine the leverage, scale, and the market-orientation associated with financial institutions with the commitment, expertise, and ability to undertake aggressive investments offered by non-profit community development organizations. Such an effort must build on the existing network of institutions that have a primary mission of community development. The Committee***1897** believes that any Federal support for community development financial institutions should be provided in a consolidated and coordinated manner, rather than by numerous agencies with conflicting programmatic goals and requirements. This legislation attempts to provide such a comprehensive support program.

B. DESCRIPTION OF LEGISLATION

1. Findings and purposes

The Committee finds that community development financial institutions can and do play an important role in revitalizing distressed communities and should be promoted by the Federal government.

2. Definitions

a. Person

For the purposes of defining a community development financial institution, "person" includes banks, savings associations, depository institution holding companies, credit unions, micro-enterprise loan funds, non-profit community development corporations, and other institutions or organizations, but does not include individuals.

b. Eligible applicants

The primary purpose of community development financial institutions must be to promote community development. The bill creates a Community Development Financial Institutions Fund with the discretion to determine whether the primary mission test is met. The Committee believes that an entity has a primary mission of promoting community development only if it meets standards that require the entity to principally engage in activities that directly or indirectly benefit low income residents of investment areas or members of targeted populations without compromising safe and sound management. Such standards should be developed by the Fund, in conjunction, when applicable, with the appropriate Federal banking agencies. The Committee recognizes that some successful community development financial institutions currently in operation are for-profit entities. The Committee intends that profit-making entities may qualify as community development financial institutions provided that they do not seek to maximize profits at the expense of their community development mission.

Community development financial institutions are required to maintain accountability to residents of their investment areas or members of their targeted populations. Although the bill does not require representation by residents of investment areas or members of targeted populations on the governing board of assisted institutions, the Committee believes such representation is desirable. The intent of this provision is to ensure local participation in the decision-making process thereby ensuring responsiveness to community needs. The Committee believes that local participation in credit and investment decisions is important to promoting revitalization and creating opportunities for residents.

Community development financial institutions may not be agencies or instrumentalities of Federal, State or local government. It ***1898** is the Committee's intent that entities that are created by or that receive substantial assistance from governmental entities may qualify for assistance provided that they are not controlled by governmental entities and maintain independent decision-making power over their activities. Thus, a special purpose corporation would not be considered an “instrumentality” solely because it is created under special legislation. For example, the New York Business Development Corporation or entities created through the State of Connecticut's Community Economic Development Fund Program would not be viewed as State instrumentalities under the definition in the bill and could apply for assistance.

The Committee believes a subsidiary of any holding company (including an insured depository institution holding company) may only qualify for assistance if the parent company and its affiliates collectively (on a consolidated basis) meet the definition of a community development financial institution. A holding company can, on a consolidated basis, meet the definition of a community development financial institution even if some of its subsidiaries or affiliates do not individually meet the definition of a community development financial institution.

The Committee intends that for-profit multi-bank (or thrift) community developments corporations may qualify as community development financial institutions. As with other community development financial institutions, such entities must be established for the purpose of promoting community development. Under current practice, for-profit multi-bank community development corporations that are regulated by the Office of the Comptroller of the Currency can only pay dividends after three years and any dividends paid must be used by the investor banks for community lending activities. The Federal Reserve does not set limits on the profits or on the timing of the distribution of profits that might be generated by bank holding company community development investments. Under the bill as reported by Committee, as long as no bank, thrift, or depository institution holding company owns more than 25% of the shares of a community development corporation or controls the election of a majority of the board of directors, the entity may qualify as a community development financial institution. The purpose of this limitation is to permit multi-bank community development corporations to apply for assistance, but prevent Federal assistance from flowing to an organization that does not have a primary mission of community development.

c. “Targeted population” and “investment area”

A community development financial institution is required to serve an investment or targeted population. The Fund will be responsible for developing “objective criteria” to be used to identify areas experiencing “economic distress” as well as criteria for determining “unmet needs for loans and equity investments.” In assessing the incidence of distress in an investment are, the Fund shall take into account the unique characteristics of rural, urban and Native-American communities. It is the Committee's intent that the Fund develop separate criteria that are suited for measuring need in urban and rural areas. Areas receiving Federal designation as empowerment zones, enterprise communities and Indian Reservations***1899** are eligible to be “investment areas.” The Fund will have the discretion to determine what constitutes an “area” for the purposes of defining area media income. With respect to rural communities, the Committee recommends that the Fund develop standards for determining the relative income levels for rural areas in consultation with the Office of Small Community and Rural Development at the Department of Agriculture.

The Committee finds that certain groups lack access to sources of debt and equity capital due to factors that are unrelated to their credit or investment capital worthiness. In determining who qualifies as a "targeted population", it is the intent of the Committee that the Fund will give consideration to persons who have historically been denied access due to factors including gender, race, ethnicity, national origin, and creed. The Committee also intends that the Fund will require institutions assisted under this subtitle to compile and maintain disaggregated data as well as analyses of impediments and constraints to credit access to ensure that targeted populations are adequately served and to demonstrate compliance in serving such targeted populations.

3. Establishment of fund

Section 104 creates the Community Development Financial Institutions Fund to administer the program authorized under this Subtitle. The Fund is a wholly-owned government corporation managed by an Administrator. The President may also appoint a Deputy Administrator. Both positions are appointed by the President and confirmed by the Senate. A five-member advisory board is created to provide advice to the Administrator on the general policies of the Fund and will operate in accordance with the Federal Advisory Commission Act. The advisory board is composed of individuals with expertise in the needs of distressed communities, the operation of insured depository institutions, community lending and development, and represent the interests of local or regional government.

4. Applications for assistance

The bill describes elements that must be part of an application for assistance. The central component of the application is the institution's comprehensive strategic plan. The plan is intended to demonstrate an applicant's capacity to function successfully as a community development financial institution and to indicate the nature and extent of needs within the communities proposed to be served as well as to how the institution will successfully meet those needs.

The bill permits the Fund to operate a pre-application outreach program. The information provided by the Fund through such a program may include instruction in preparing an application or training to increase the capacity of potential applicants. It is not the intent of the Committee for the Fund to provide any grants, loans or other financial or technical assistance (except for training) though the pre-application assistance program. The Committee believes that such Federal resources should only be used to assist organizations selected pursuant to criteria described in section 107 or pursuant to sections 106 and 115. The Fund may charge participants***1900** of the pre-application program a fee for any training services received pursuant to section 109(e).

5. Community partnerships

The bill permits community development financial institutions and other organizations to submit a joint application for assistance called "community partnerships." A "community partner" is an entity that provides loans, equity investments, or development services. Community partners may include (among others) depository institution holding companies, insured depository institutions, insured credit unions, non-profit organizations, state or local government agencies, and investment companies authorized pursuant to the Small Business Investment Act of 1958. The Committee's intent in authorizing applications by community partnerships is to leverage resources and encourage collaboration between community development financial institutions and other organizations. All federal assistance must be distributed to the community development financial institution and cannot be used for activities carried out by the community partner.

The bill provides that a community partnership consists of an agreement between a community development financial institution and community partner to provide development services and either loans or equity investments to an investment area or targeted population. An application will specify the functions that the community development financial institution and the community partner will each perform to achieve the partnership's goals. For example, a partnership might work in the following manner: A community development financial institution and bank entering into a community partnership could agree to finance $50 million in small business loans. The community development financial institution could perform business planning, loan counseling, and financial packaging, while the bank could make the loans.

The Fund is required to negotiate performance goals as part of the assistance agreement with the partnership specifying the duties required of each party to the partnership. The Committee intends that the Fund will establish limitations as part of the assistance agreement to ensure that, in the event of a failure to perform on the part of a party to the partnership, the performing party will not be held liable for the failure of the non-performing party. All duties imposed on the partnerships should be in furtherance of community development goals and, as such, the duties should be structured to encourage active participation on the part of all parties to the partnership. Because community partners are not eligible to receive assistance directly, the Fund should not impose inappropriate restrictions or liabilities on such partners. The Fund shall also ensure that assistance agreements are structured in a manner that guarantees that community development financial institutions participating in partnerships are self-sufficient, active participants in attaining the goals of the partnerships, and not dependent on the resources of the community partners for continued viability.

***1901** 6. Selection of institutions

The bill describes criteria to be used by the Fund to evaluate and select institutions for assistance. Such criteria accord favorable weight to applicants with the attributes specified in section 107 and are intended to provide guidance in considering competing applications. The Fund is given discretion to consider additional criteria and evaluate the relative importance of each criterion. The Committee, however, believes that criteria which consider the likelihood of success, extent of economic distress and need, targeting of resources to targeted populations or investment areas, responsiveness to community needs, and if an institution will serve an empowerment zone or enterprise community pursuant to section 1391 of the Internal Revenue Code or an Indian Reservation, should be given greater weight in awarding assistance.

The bill ensures that the Fund will serve a geographically diverse group of applicants from urban, rural and Native American communities. The Committee recognizes that there is significant distress and need among many different types of communities across the nation. Some rural interests have expressed concern that the needs of rural communities are often overlooked, particularly when such communities are competing with urban areas for Federal funds. While the Committee believes that no community should receive a preference for assistance by virtue of its geographic location, it is the Committee's intent that the Fund take into consideration the unique nature of distress in each type of community.

7. Assistance

The bill enables the Fund to provide assistance in the form of equity investments, but the Fund is prohibited from holding more than a 50-percent interest in any community development financial institution and from controlling the operation of any assisted institution. The Fund may not own any voting shares in an assisted institution. The Fund, thus, cannot be viewed as a controlling shareholder.

The types of activities for which assisted institutions may use Federal assistance are specified. Although the bill indicates that Federal assistance may be used for “development or supporting” specified activities, it is the Committee's intent that this provision not be construed to permit insured depository institutions or depository institution holding companies to engage directly in activities that they are prohibited from undertaking under other laws. The bill specifies that it does not limit the authority of the bank regulatory agencies to supervise or regulate an insured institution or holding company. This is intended to prevent any interpretations of provisions in this subtitle that would alter or otherwise interfere with regulation of assisted insured depository institutions and holding companies.

The bill limits to $5 million (in any three-year period) the amount or assistance any community development financial institution and its affiliates can receive. However, in the case of a community development financial institution that proposes to establish a new subsidiary or affiliate for the purpose of serving an investment area or targeted population in another state, an institution ***1902** may be eligible to receive up to $7.5 million in any three year period provided that not less than $2.5 million of that assistance is used to establish such a subsidiary or affiliate. For example, South Shore Bank of Chicago, Illinois has expressed its interest in establishing a subsidiary to serve an investment area located in the Detroit metropolitan area. Under this scenario, South Shore Bank would be eligible to receive up to $7.5 million provided it used not less than $2.5 million to establish a subsidiary to serve an investment area in the metropolitan Detroit area. The bill prohibits institutions from being eligible to receive more than $5 million if they propose to establish a subsidiary in a new state that is in a metropolitan area currently served by the institution. Institutions serving metropolitan areas that span the jurisdictions of more than one state should not receive more favorable treatment under the assistance limits.

Assisted institutions are required to provide matching funds from sources other than the Federal government for all assistance (except technical assistance) received. The Fund is given the discretion to waive the matching requirements by up to 50% for not more than 25% of funds dispersed by the Fund in any fiscal year for applicants with “severe constraints” on matching sources. The Fund should also develop objective standards to measure” severe constraints.”

It is critical that all assisted community development financial institutions be financially and managerially sound. The Fund will be responsible for developing standards of financial accountability for assisted institutions that are not insured depository institutions or depository institution holding companies. Prior to awarding assistance or imposing sanctions on an insured depository institutions or a depository institution holding company, the Fund will consult with the appropriate bank regulatory agency to ensure that any actions by the Fund will not threaten the safety and soundness of the institution. If the Fund wishes to impose a sanction on an insured institution or depository institution holding company, it must notify the appropriate Federal regulatory agency 15 days prior to taking action, and may not take an action that is opposed by such regulatory agency during the 15 day period.

An institution, including a community partner, selected for participation will enter into an assistance agreement with the Fund specifying the terms and conditions of assistance. Incorporated within the terms and conditions will be performance goals. Performance goals will be negotiated between the Fund and an assisted institution or community partnership and will be based on the assessment of community needs and plans for meeting those needs contained in the institution's or partnership's comprehensive strategic plan. The Committee believes performance goals will be critical to ensure the institutions are effectively managed and advance their community development mission. Performance goals should measure the success of community development financial institutions (and community partners) in achieving specific lending, capital and development objectives including developing appropriate expertise, effective management systems, and promoting community development.

***1903** To facilitate the enforcement of limitations on assistance entered into in accordance with the requirements of this Subtitle, the Fund should structure the initial assistance agreement so that the performance goals and other obligations of the applicant will continue in effect even if the Fund transfers to a third party its financial interest in an assisted institution.

8. Community development training

Enhancing the institutional capacity of assisted institutions is critical to the success of this initiative. The bill creates a training program to increase the ability of community development financial institutions and other members of the financial services industry to provide financial services, revitalize distressed communities, and increase access to equity and debt capital among traditionally under-served communities. The Fund may charge fees for participation in the training program for the purpose of off-setting the cost of providing training services. The Fund may, if appropriate, charge fees based on the ability of participants to pay for such services.

9. Encouragement of private entities

The bill gives the Fund the authority to facilitate the creation of “private entities.” This provision is intended to allow the Fund to facilitate the formation of organizations that perform functions which complement the activities of the Fund. For example, the Fund could assist the creation of organizations that will enhance the liquidity of community development financial institutions, information clearinghouse or training organizations, or organizations that will pool private sector investment for the purpose of investing in community development financial institutions. The Fund may provide technical assistance and expertise, but may not incorporate any organizations and may not have an ownership interest or fund the organization or operation of any entity created under the authority of this section.

10. Clearinghouse

The Fund is authorized to create a clearinghouse to collect and disseminate pertinent information to community development financial institutions that will improve their management effectiveness and enhance their ability to serve distressed communities. While the Fund is authorized to operate a clearinghouse, it is not mandated to do so. The Fund shall consider the need for such a service and the private sector's ability to fill that need.

The Committee believes that all Federal departments and agencies that play a role in facilitating community development or lending should contribute information and resources to support the clearinghouse (if one is created). These agencies include the Department of Agriculture, Commerce, Housing and Urban Development, Interior, and Treasury, as well as the Small Business Administration and the bank regulatory agencies. The Committee believes that strong support by such Federal departments and agencies will be critical to the success of this initiative. As such, the bill will permit the Fund, as part of its general powers, to utilize or employ the services of personal of any agency of the United States ***1904** with the consent of the agency concerned on a reimbursable or nonreimbursable basis. It is the Committee's desire that Federal departments and agencies will contribute such needed resources to the Fund.

11. Liquidity Enhancement

The Committee believes that an opportunity exists to expand the capacity of community development financial institutions by supporting organizations that will enhance their liquidity. Due to the unique nature of financing required for many community development activities, traditional secondary markets that emphasize standardization in lending products and require a high volume of transactions might not be able to meet all the needs of community development financial institutions. The bill permits the provision of assistance to entities that enhance the liquidity of community development financial institutions through the purchase of loans or other means deemed appropriate by the Fund.

Only entities whose primary purpose is the facilitation of community development lending will be eligible for assistance. The Committee believes that the Fund should require active and on-going consultation between entities assisted under this section and community development financial institutions to ensure that such entities are responsive to the needs of assisted institutions. No entity awarded assistance pursuant to this section may qualify for other assistance under this Subtitle or receive more than $5,000,000 in assistance during any three year period. Not more than 5% of amounts appropriated under this Subtitle may be used for purposes authorized under this section. The Committee intends that the Fund interpret this 5% limit as a ceiling on the amount of funds that can be used for this purpose rather than a mandate to provide assistance in that amount. As with community development financial institutions, the Fund's liability for loss is limited to the amount of Federal funds invested in such entities. Obligations and liabilities of any organization assisted under this section shall not carry an express or implied guarantee of the United States government. Entities assisted pursuant to this provision will be required to submit annual activity reports and independent audited financial statements every 18 months.

12. Disclosure

To the extent that assisted non-insured community development financial institutions take deposits from the public, it is the Committee's understanding and intent that they be subject to the disclosure requirements of Section 40(b) of the Federal Deposit Insurance Corporation Improvement Act of 1991. This section requires that all periodic statements and account records include conspicuous disclosures giving notice that the “institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.” This disclosure is required on all periodic statements of account, each signature card and passbook, and certificate of deposit or similar instrument evidencing a deposit. In addition, all advertising is required to include a disclosure that the institution is not federally insured. At each place where deposits are normally received, a notice***1905** is required to be posted that the institution is not federally insured.

13. Authorizations

The Committee authorizes appropriations of $60 million for FY 1994, $104 million for FY 1995, $107 million for FY 1996, and $111 million for FY 1997 for the Fund. The Fund may use not more than $5.5 million annually for administrative costs and not more than $50,000 annually for expenses of the advisory board. Money appropriated by Congress for the Fund is required to fall within the discretionary spending caps established in the Budget Act.

The Subtitle also authorizes additional appropriations of $5 million over 4 years for the Community Development Credit Union Revolving Loan Fund operated by the National Credit Union Administration Board.

SUBTITLE B: HOME OWNERSHIP AND EQUITY PROTECTION

A. INTRODUCTION

Subtitle B of Title I addresses the problem of “reverse redlining.” Redlining is the practice of denying credit within certain geographic boundaries, often based on income, race, or ethnicity. The Committee uses the term “reverse redlining” to describe the targeting of residents of those same communities for credit on unfair terms. Considerable testimony before the Committee indicates that communities lacking access to traditional lending institutions are being victimized in this fashion by second mortgage lenders, home improvement contractors, and finance companies who peddle high-rate, high-fee home equity loans to cash-poor homeowners.

Legislation is needed to address reverse redlining and to protect borrowers who might enter into home equity scam transactions. Subtitle B does not create a usury limit or prohibit loans with high rates or high fees. Certain loan structures, however, are potentially dangerous when misused. The Committee has acted to provide additional consumer protections for these structures.

The bill amends the Truth in Lending Act to define a class of non-purchase, non-construction, closed-end loans with high interest rates or upfront fees as “High Cost Mortgages.” To ensure that consumers understand the terms of such loans and are protected from high pressure sales tactics, the legislation requires creditors making High Cost Mortgages to provide a special, streamlined High Cost Mortgage disclosure three days before consummation of the transaction. The bill also prohibits High Cost Mortgages from including certain terms such as prepayment penalties and balloon payments that have proven particularly problematic. Finally, the bill provides increased civil liability for failure to comply with the requirements for High Cost Mortgages and enables a borrower to assert all claims and defenses against an assignee of the High Cost Mortgages that could be asserted against the originator.

B. THE REVERSE REDLINING PROBLEM

Mortgages are loans secured by real estate. Most residential mortgages are purchase or construction mortgages, with the proceeds used to finance the purchase or initial construction of the ***1906** home. “Home equity loans” and “second mortgages,” however, are mortgages whose proceeds are not used to purchase or build the home serving as security for the loan. Such “non-purchase money mortgages” are also secured by homes, but the proceeds are characteristically used for purposes such as home improvements or credit consolidation.

Evidence before the Committee indicates that some high-rate lenders are using non-purchase money mortgages to take advantage of unsophisticated, low income homeowners. While individual cases differ, a pattern has emerged in which low income, often elderly, homeowners claim that mortgage lenders, brokers, or home improvement contractors have “hustled” them into taking out non-purchase money mortgages with extremely high interest rates, fees, or both. The homeowners often say they were misled about the payment schedule or were even unaware that they signed a mortgage agreement.

Typically, the homeowners have limited incomes but have developed equity in their homes as a result of paying down their first mortgages, inheritance, or the rise in real estate values in the 1980s. The equity provides security for sizeable second mortgage loans. Because the borrowers have little cash flow, however, they must often struggle to meet overwhelming mortgage payments. In some instances, the struggle culminates in the borrower's loss of his or her home through foreclosure.

Evidence suggests that some home improvement contractors, second mortgage brokers, and other lenders act in a “predatory” fashion, targeting unsophisticated, low income homeowners and “skimming” equity from the neighborhoods through high-rate, high fee loans. Mortgage finance companies often purchase the loans which they retain as portfolio investments or resell to banks and other financial institutions.

C. COMMITTEE RECORD

After investigating reports of home equity loan abuses, the Committee held a hearing on “Reverse Redlining: Problems in Home Equity Lending” on February 17, 1993. Part of a series of three hearings on access to credit and capital in distressed communities, this hearing explored the causes and extend of the reverse redlining problem.

Witnesses included: the Honorable Scott Harshbarger, Attorney General of Massachusetts; Kathleen Keest, National Consumer Law Center; Terry Drent, Ann Arbor Community Development; John Hamill, President of Fleet Bank of Massachusetts; Bruce Marks, Union Neighborhood Assistance Corporation; and Eva Davis and Annie Diggs, two elderly borrowers who had been victimized by shady second mortgage lenders.

In Ms. Davis' case, the 72-year old homeowner was contacted by a home improvement contractor operating door-to-door. By the end of the day, she had financed repairs to her home with a $150,000 second mortgage for which she paid an initial “prepaid finance charge” of over $23,000. The monthly payment exceeded her monthly income.

***1907** Facing foreclosure, Ms. Davis implored the Committee, “I hope members of Congress can do something to protect people like me whose only mistake was to trust people who sounded honest.”

In addition to the witnesses who appeared, the committee received written testimony describing reverse redlining from the Legal Aid Foundation of Los Angeles, the New York City Office of Consumer Affairs, the Office of the New York State Attorney General, Southern Arizona Legal Aid, and the Southern Mississippi Legal Services Corporation.

In response to the February 17th hearing, Senators Riegle and D'Amato introduced S. 924, the “Home Ownership and Equity Protection Act” on May 7, 1993. Most of the provisions of that legislation have been included in Subtitle B of Title I.

On May 19, 1993, the Committee conducted a legislative hearing on S. 924. At the hearing, Comptroller of the Currency Eugene Ludwig described the legislation as “a sensible response to reverse redlining.” He went on to say,

> The only loans that the Act would deter are those that charge excessive interest or up-front fees, and have repayment terms that the borrower cannot possibly meet. Consequently, I do not believe the remedies contained in the Act would impose unreasonable compliance costs or interfere with legitimate financial transactions.

D. DESCRIPTION OF LEGISLATION

Through Subtitle B of Title I, the Committee seeks to provide the consumer protections necessary to address reverse redlining without materially restricting the flow of credit or imposing an excessive burden on lenders or consumers.

1. High cost mortgages

The legislation defines a class of mortgages as “High Cost Mortgages.” The bill defines these transactions to be closed-end loans that are not used for acquisition or construction and that have up-front fees or interest rates above the “triggers” in the bill.

The Committee has chosen to exempt open-end credit plans, such as home equity lines of credit, on which a consumer can borrow as the need arises and pay back as desired. Committee hearings on reverse redlining produced no evidence of abusive home equity loan practices in the open-end credit market.

The Committee has also exempted purchase and construction loans by excluding “residential mortgage transactions” as defined in the Truth in Lending Act. Because the consumer typically lacks substantial equity in the property when such transactions occur, the consumer is not vulnerable to unscrupulous lenders.

At the same time, the Committee has included refinancings of existing mortgages. In many cases reviewed by the Committee, borrowers were convinced to refinance loans repeatedly while paying outrageous up-front fees. The borrower received very little cash, yet the debt burden mushroomed.

***1908** 2. Annual percentage rate trigger

The definition of High Cost Mortgage in the bill reported by the Committee includes only loans with an annual percentage rate exceeding 10 percentage points above the rate on comparable maturity Treasury securities. This spread was supported by Comptroller Ludwig in his testimony before the Committee, who further argued against any reduction in this 10 point spread.

The Committee is aware of concerns that the bill will restrict the flow of credit and believes that the 10 percentage point spread properly focuses on the segment of the home equity loan market most vulnerable to abuse. This spread is substantially above the average for closed-end home equity loans. A 1992 survey of 93 banks, thrifts, credit unions, and finance companies conducted by the Center for Financial Services Studies at the University of Virginia found that the average spread over one-year Treasury bill rates for closed-end home equity loans was 4.36%. While the survey was not limited to high risk home equity loans which can be expected to carry higher rates, the 10 percent spread in the Committee's bill is still more than twice the average in the industry. Further, since the legislation uses “comparable maturity” Treasury securities, the spread is less restrictive than might be expected assuming a traditional positively sloped yield curve.

A narrower survey of finance companies, which more often serve high risk borrowers, conducted in June, 1993, indicated that 85% of closed-end home equity loans originated had interest rates below 15%. Assuming an average term of five years, all 85% had interest rates less than 10 percentage points above the June 1993 five-year Treasury rate of 5.21.

To minimize burden on lenders, the Treasury market rates from the 15th day of the prior month will determine the threshold rates.

3. Points and fees trigger

The bill also includes loans with up-front fees and points exceeding the greater of $400 or 8 percent of the total loan amount in its definition of High Cost Mortgage. The 8 percent level for points and fees is well above the industry average. At the same time, the Committee provided a $400 minimum to ensure that small loans were not inadvertently covered by the legislation. The $400 minimum will be adjusted annually for inflation.

Through the 8 percent trigger, the Committee is seeking to prevent unscrupulous creditors from using grossly inflated fees and charges to take advantage of unwitting consumers. The Committee has included in the 8 percent limit all elements of the finance charge except interest and time-price differential. Under the Truth in Lending Act, the finance charge is determined as "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit."

The bill also covers other charges that have been used to exploit unwitting consumers but are not part of the finance charge under Truth in Lending. The bill includes in its definition of points and fees any direct or indirect compensation received by the creditor in connection with credit insurance and any compensation paid to mortgage brokers. It also includes charges such as appraisal fees, ***1909** title examination, document preparation fees, and credit report charges unless the charge is reasonable, paid to an unaffiliated third party, and involves no direct or indirect compensation to the creditor.

As with the annual percentage rate trigger, the points and fees trigger is intended to focus on the home equity loans most vulnerable to abuse. A survey of finance companies conducted in 1993 found average lender points on home equity loans to be 2.2 and average broker points of 0.43. While the legislation may include other fees not included by the survey, the Committee does not believe the legislation to be overly restrictive.

4. Definition of creditor

The current definition of creditor in Truth-in-Lending excludes those who originate four or fewer mortgages per year. For High Cost Mortgages, the Committee has extended coverage to anyone making a high cost mortgage through a broker and anyone who makes more than one High Cost Mortgage in a twelve month period. The Committee seeks to prevent brokers from evading the legislation by matching each borrower with a different private individual acting as lender.

5. Disclosure

To ensure that consumers understand the risks and costs of High Cost Mortgages, the legislation requires a new, streamlined disclosure form. Under Truth-in-Lending, the consumer will maintain the right to cancel the loan if this disclosure is not provided.

The disclosure created by the bill will include statements that the borrower need not complete the transaction and could lose his or her home through failure to comply with the loan terms. For fixed rate loans, the disclosure must also indicate the annual percentage rate ("A.P.R.") and monthly payment. Disclosure for variable rate loans must include a statement that the rate could increase and a specification of the maximum possible monthly payment.

The home equity loan abuses identified by the Committee often involved high pressure sales tactics, and lenders and brokers operating door-to-door. In response, the legislation requires the High Cost Mortgage disclosure to be provided three days before the consummation of the loan. This "cooling-off" period prevents creditors from knocking on a borrower's door and closing a loan on the same day.

6. Prohibited terms

The Committee finds that certain loan terms are particularly problematic and often mislead borrowers about the true cost of a loan. Consequently, the legislation prohibits High Cost Mortgages from containing the following terms: prepayment penalties, points on loan amounts refinanced, default interest rates above the rate prior to the default, balloon payments, negative amortization, or prepayment of more than two of the periodic payments.

***1910** a. Prepayment penalties

Prepayment penalties compensate a lender in the event that a borrower repays a loan before the date specified by the loan terms. In the case of High Cost Mortgages, however, the Committee believes that the broader public interest is served by eliminating barriers that might prevent a borrower from repaying the loan. While this prohibition increases the interest rate risk of the creditor, the risk is mitigated by the already high interest rate or fee income on a High Cost Mortgage. The Committee's action is in keeping with many state policies. Prepayment penalties are presently prohibited in 12 states and limited in at least 10 others.

b. Points of Refinancing

The Committee learned that one of the most common means used by lenders or brokers to strip the equity from a consumer's home is to refinance the mortgage repeatedly and collect points and fees on the amount refinanced each time. The consumer receives no new money, yet the debt obligation mushrooms. Section B of Title I curtails this abuse by prohibiting the charging of points or discount fees when the same creditor or an affiliate refinances a High Cost Mortgage. Fees that represent real costs of settlement (for appraisal, credit report, title insurance, attorneys, etc.) are still allowed.

c. Balloon Payments

Another common source of trouble for consumers is balloon payments. When used with High Cost Mortgages, balloon payments often mislead the borrower by making the loan appear less expensive than is the case. Later, when the consumer is unable to afford the balloon payment, he or she may face a choice between foreclosure and refinancing on outrageous terms.

The Committee does not intend for the prohibition of balloon payments to apply to a payment which only minimally differs from the regular loan payments. The committee judge variations of up to 50% more or less than the amount of the regular monthly loan payment to a minimal, assuming the loan has a reasonable maturity.

d. Negative amortization

Negative amortization has also proven problematic when used with high rate, high fee loans. By negative amortization, the Committee refers to loans where the regular monthly payment do not cover the interest due. As a result, the outstanding principal grows during the term of the loan. In the Committee's judgment, these low monthly payments often mislead the consumer about the cost of the loan.

e. Prepaid payments

Prepaid payments are regular periodic loan payments that are consolidated and paid in advance from proceeds of the loan that would otherwise go to the borrower. If prepaid payments are financed, they inflate the amount borrowed and allow the lender effectively to charge interest and points on interest. Given the extremely high rates and points involved in High Cost Mortgages, the Committee has chosen to prohibit prepaid payments.

***1911** f. Discretionary regulatory authority of the Federal Reserve

With each prohibition, the Committee has sought to address loan terms that have been particularly problematic. The Committee recognizes, however, that such terms may, in some instances, be in the interest of the borrowing public. Acknowledging that the prohibitions are an imprecise tool of policy, the Committee has therefore provided the Federal Reserve Board with discretionary authority to exempt specific mortgage products or categories of products from the prohibitions.

The Committee is aware, for example, of concerns regarding the potential impact of the bill on “reverse mortgages” sometimes utilized by elderly homeowners. Reverse mortgages are, by nature, negative mortization loans with balloon payments at the end. While the Committee believes that reverse mortgages presently insured by the Federal Housing Administration are “open end credit plans” and therefore not covered by this legislation, other reverse mortgages, such as those offered in conjunction with annuities, may be inadvertently covered as High Cost Mortgages. It is the Committee's intention that the regulatory discretion provided in the legislation be utilized to address such a problem and to exempt legitimate reverse mortgage products. The Committee notes that the F.H.A.'s Home Equity Conversion Mortgage loans already must meet disclosure requirements that recognize the sensitivity of reverse mortgages to loan duration and appreciation rates.These disclosure requirements could serve as a model for disclosures to be provided with other reverse mortgages.

The Board may also consider waiving the limitation on charging points, fees, and prepaid finance charges on loans refinanced by the original lender (or an affiliate) so long as the refinancing results in a loan which will be more affordable and has a lower total cost to the consumer, after considering the up-front charges, new annual percentage rate, monthly payments, total of payments and the term for the re-financed loan. Lower total costs would not necessarily be an adequate justification for waiving other prohibitions applicable to high cost mortgages.

The discretionary authority provided in the bill for High Cost Mortgages replaces, for these mortgages, the existing regulatory discretion in the Truth in Lending Act. It is the Committee's intention to allow exemptions for High Cost Mortgages only from the prohibitions in the legislation, not from the liability or disclosure provisions.

While recognizing the need to exempt certain products, the Committee also realizes that new products and practices may emerge that facilitate reverse redlining. For this reason, the legislation requires the Federal Reserve Board to prohibit acts or practices in connection with High Cost Mortgages that it finds to be unfair, deceptive, or designed to evade the provisions of this section. It is the Committee's intention that the Federal Reserve will examine complaints and utilize this legislation to provide adequate protections for consumers under Truth in lending.

7. Damages

In light of the damage that can be caused by unscrupulous creditors making High Cost Mortgages and the careful targeting of the ***1912** legislation, the Committee bill provides increased damages for failure to comply with the requirements of Subtitle B. In addition to exiting damages under Truth in Lending, damages for a material violation of the High Cost Mortgage provisions include an amount equal to all finance charges and fees paid by the consumer in connection with the transaction.

Miscalculations, computer malfunctions, printing mistakes, or other similar errors shall not be deemed material if the creditor maintained reasonable procedures to prevent such mistakes. Failure to provide the High Cost Mortgage disclosure three days before consummation and inclusion of prohibited loan terms, however, are material violations of the Subtitle B of Title I. The Committee also intends that errors of legal judgement be deemed material.

8. Attorney general enforcement

Many instances of reverse redlining have involved finance company lenders and brokers that are only loosely regulated by the Federal government. Therefore, the Committee bill allows State Attorneys General to enforce the provisions of Subtitle B. If feasible, however, the Attorneys General must notify the appropriate Federal agency prior to any civil action.

9. Assignee liability

The bill eliminates “holder-in-due-course” protections for assignees of High Cost Mortgages. Assignees of High Cost Mortgages are subject to all claims and defenses, whether under Truth in Lending or other law, that could be raised against the original lender. For other mortgages, Truth in Lending extends liability to assignees only for Truth in Lending violations that are apparent on the face of the loan documents.

The bill limits damages for assignees to the sum of the total amount paid by the consumer in connection with the transaction and the amount of all remaining indebtedness. To ensure that the assignee is aware of the potential liability, the legislation requires that any person selling a High Cost Mortgage to include a notice, as prescribed by the Board of Governors of the Federal Reserve.

By imposing assignee liability, the Committee seeks to ensure that the High Cost Mortgage market polices itself. Unscrupulous lenders were limited in the past by their own capital resources. Today, however, with loans sold on a regular basis, one unscrupulous player can create havoc in a community by selling loans as fast as they are originated. Providing assignee liability will halt the flow of capital to such lenders.

This provision mirrors a rule promulgated by the Federal Trade Commission for “consumer installment” loans such as home improvement or auto loans. The F.T.C. rule has not significantly restricted the flow of consumer credit and or interfered with the securitization of auto loans. The Committee expects that establish, trustworthy originators sell their loans by entering into recourse agreements with the purchasers.

***1913** TITLE II: SMALL BUSINESS CAPITAL FORMATION

A. INTRODUCTION

The Committee recognizes the importance of small businesses to the American economy, and the importance of bank lending to small businesses. Title II accordingly contains two provisions designed to encourage small business lending.

First, Subtitle A incorporates S. 384, the Small Business Loan Securitization and Secondary Market Enhancement Act of 1993, introduced by Senator D'Amato and others. Subtitle A is intended to encourage the securitization of small business loans. This should make credit more available and more affordable to small businesses.

Second, Subtitle B incorporates S. 478, the Small Business Capital Enhancement Act of 1993, introduced by Senators Riegle, Dodd and Lieberman. Subtitle B provides Federal support for State small business lending initiatives. This should encourage more States to adopt such programs.

B. IMPORTANCE OF SMALL BUSINESS

Small businesses have always been an important source of new products and new technologies. They are also an important source of jobs. The Small Business Administration reported that in 1990, half of the civilian, nonagricultural workforce of the United States worked for firms with fewer than 500 employees. According to the SBA, 99.8% of all business enterprises have fewer than 500 employees.

With large corporations reducing their workforces in order to increase their competitiveness, the American economy is increasingly dependent on small business for job creation. The SBA reports that between 1988 and 1990, firms with fewer than 20 employees created over 4 million jobs while firms with more than 20 employees eliminated more than 1 million jobs. Testifying on September 9, 1993, Federal Reserve Governor John LaWare stated, “the prospect for future growth and prosperity depends importantly upon the vitality and performance of small- and medium-sized businesses.”

C. BANK LENDING TO SMALL BUSINESS

Given the importance of small businesses to economic growth and job creation, it is imperative that small businesses have access to the capital and credit they need.

America's entrepreneurs rely first on themselves as a source of seed capital. A 1990 study by the National Federation of Independent Business Foundation, New Business in America, found “[m]ost new business owners rely heavily on their own resources to finance their ventures.” Banks and other lending institutions play a crucial role, extending loans to 45% of new ventures. Family and friends are another important source of seed capital for start-up businesses; the report found they provide funds to more than 25% of new businesses.

Once a business is established and growing, it may be able to raise capital through the securities markets, such as by an initial public offering of stock ("IPO"). IPO's have proceeded at a record ***1914** pace during 1992 and 1993. In 1992, 595 companies raised a record $39.4 billion in IPO's. During the first half of 1993, 289 companies sold a record $26.4 billion of stock in IPO's.

Small and start-up businesses, however, have not had much success tapping the securities markets for capital. The NFIB Foundation study found "[o]utside investors were involved in only about one new firm in 10" and the "number of new business owners who used either institutionalized venture capital or government programs was negligible." This is particularly disappointing, because "firms with outside investors were more likely to grow, all factors equal."

Small and start-up businesses, therefore, depend principally on credit provided by the banking system. Numerous witnesses have testified before the Banking Committee in recent years that medium and small sized businesses have experienced difficulties obtaining credit due to a reluctance by banks to make loans. Commercial and industrial loans at U.S. commercial banks fell by 4 percent in 1992, the third straight year of decline. (Federal Reserve Bulletin, July 1993, at 651.) David Gladstone, President of Allied Capital, was blunt in his March 4, 1993 testimony: "There is almost no credit available to small business today."

At a February 19, 1993 hearing, Federal Reserve Chairman Alan Greenspan testified that weakness in the banking sector was hurting small business and by extension the economy.

> Historically, banking institutions have played a critical role in financing small and medium-sized businesses–firms that in the past have been a key source of growth in the economy. Some of the factors leading to the relative shrinkage of our banking industry, by limiting the availability of credit to smaller firms, have restrained aggregate demand and thus have significantly hindered the economic expansion.

Chairman Greenspan stated that availability of credit "is a major factor in the problems that small businesses have and their ability to finance their employment and product growth."

D. SUBTITLE A–SMALL BUSINESSES LOAN SECURITIZATION AND SECONDARY MARKET ENHANCEMENT ACT

In order to increase the availability and affordability of credit for small businesses, Subtitle A removes regulatory obstacles that hinder the securitization of small business loans.

1. Explanation of securitization

"Securitization" refers to the pooling of financial assets, such as loans, and the issuance of securities representing interests in the pool. In Securitization of Credit, James A. Rosenthal and Juan M. Ocampo define credit securitization as

> [T]he carefully structured process whereby loans and other receivables are packaged, underwritten, and sold in the form of securities (instruments commonly known as asset-backed securities). As such, it is a subset of a broader trend seen throughout the capital markets for many years, *** the general phenomenon whereby more and ***1915** more fund raising is occurring through the agency of securities.

Securitization offers benefits to both the issuers and purchasers of securities. Issuers are able to remove financial assets from their balance sheets. In this way, issuers can increase their liquidity. By separating higher quality assets from riskier lines of business, they may also be able to reduce their cost of funding. Insured depository institutions issuing securities may be able to reduce their capital requirements. Purchasers of securities receive assets with a specific credit quality and liquidity. Investors are insulated from the general credit quality and liquidity of the enterprise that originated the financial assets.

2. SMMEA and mortgage securitization

In 1984, Congress passed the Secondary Mortgage Market Enhancement Act ("SMMEA"). As stated in the accompanying Senate report, the purpose of that legislation was to "broaden[] ... the market for mortgage-backed securities by encouraging more extensive involvement of the private sector in the formation of conduits for the flow of mortgage capital from investors to lenders and homebuyers." SMMEA removed a number of legal impediments to the securitization of residential mortgages. These included amendments to the Federal securities laws relating to margin and securities delivery requirements, allowing issuers more time to pool mortgages and sell securities; amendments to Federal banking law to allow thrifts, credit unions and national banks to invest in mortgage-backed securities; and preemption of State investment laws to allow institutional investors and other fiduciaries to invest in mortgage-backed securities.

Most observers conclude that securitization of residential mortgages has increased the amount of capital available for home mortgages, assuring a continuous supply and bringing down their cost. SEC Commissioner Carter Beese, for example, testified on September 9, 1993 that SMMEA "has been a highly effective means of increasing the flow of capital to [the mortgage] markets."

3. Securitzation of other financial assets

Following the growth of the market for mortgage-backed securities, other types of loans are also now regularly securitized. In 1985 the first securities backed by automobile loans were offered. 1987 saw the first securities backed by credit card receivables. More recently, equipment leases have been regularly securitized. In 1991, $299 billion of loans were securitized, including $200 billion in mortgages, $22 billion in credit card receivables, and $17 billion in auto loans. Securitization has been made possible by rapid improvements in computer and telecommunications technology.

To date, only a small number of small business loans have been securitized. In January 1992, Chrysler's finance subsidiary issued $350 million in securities backed by a pool of small business loans secured by real estate. In March 1993, The Money Store issued $76 million in securities backed by the unguaranteed portion of SBA loans. In April 1993, Fremont General Corp. issued $200 million of revolving credit advances to small businesses. The securities are ***1916** backed by small business accounts receivable, inventory and equipment.

In an action that may lead to increased securitization of small business loans, in November 1992 the SEC exempted structured finance vehicles (also known as "asset-backed" financing) from the Investment Company Act of 1940. Structured finance issuers pool income-producing assets and issue securities backed by those assets. The new rule conditionally exempts structured financing from regulation under the Investment Company Act. The SEC also expanded its "shelf registration" procedures under Rule 415 to apply to investment grade asset-backed securities. This permits issuers to register securities with the SEC before specific financing needs arise, and to issue the securities in the future, when market conditions are most favorable.

4. Barriers to small business securitization

Testifying on behalf of the Public Securities Association on March 4, 1993, Patricia Jehle, Senior Managing Director of Bear, Stearns and Co., described some of the factors inhibiting the development of a secondary market for small business loans. She first identified the nature of small business lending:

> One of the problems immediately apparent in attempting to create a market for securitized small-business loans akin to the mortgage-backed securities market relates to the nature of small-business lending and the kind of relationship that exists between banks and their commercial clients. Unlike home buyers, small businesses shopping for credit often have ongoing financing needs that cannot be satisfied with a single loan or a single type of loan. *** It is often the case that long before the loan is paid, the borrowing needs of the business change, and the loan must be restructured.

Ms. Jehle states that "[t]he need for this type of flexibility would not necessarily prevent securitization of small business loans." She expressed confidence that "the market is sufficiently flexible to put in place mechanisms that would take into account the special relationship between the small business and its banks."

Ms. Jehle went on to state, “[t]he primary hurdle to overcome in the securitization of commercial loans involves credit risk. *** An issuer of a small-business credit-backed security would typically not have access to *** a large number of similar commercial loans, or may have concentrations within industries or geographic areas which would indicate higher levels of credit risk.*** Credit enhancement is therefore an essential element to securitizing small business loans.”

Sales of loans “with recourse” and a common form of credit enhancement. Sales of loans “with recourse” refer to sales where the seller retains an obligation to pay the purchaser for losses arising from the failure of the borrowers to pay when due, or to cover the effects of prepayments. Statement of Financial Accounting Standards No. 77, “Reporting by Transferers for Transfers of Receivables with Recourse,” sets forth generally accepted accounting principles (“GAAP”) for sales of financial assets with recourse. FAS 77 provides***1917** that a transfer of receivables with recourse shall be reported as a sale if the transferor surrenders control of the future economic benefits embodied in the receivables; the transferor's obligation under the recourse provisions can be reasonably estimated; and the transferee cannot require the transferor to repurchase the receivables except pursuant to the recourse provisions.

Ms. Jehle noted, “current bank regulatory policy would seem to discourage [loan sales with recourse] by banks.” The Federal banking regulators apply accounting rules different from GAAP to most sales of assets with recourse by federally insured banks and thrifts. For regulatory accounting purposes, most sales of assets with recourse are treated as borrowings: the assets remain on the balance sheet, and any gain on the asset transfer is deferred. Because the assets remain on the balance sheet, the bank's capital requirements with respect to the asset do not change. Testifying on behalf of the American Bankers Association on September 9, 1993, Edward Yingling said, “if there is too high a capital cost***banks simply will not sell into the secondary market.***[T]hey would be giving up the income stream but keeping the cost.”

Ms. Jehle further stated that “[t]ransactions in securities backed by small-business loans also face tax problems.” As was true for mortagage-backed securities prior to the Tax Reform Act of 1986, the income from a pool of small business loans could be subject to taxation at the level of the securities issuer and again at the level of the securities holder. Uncertainty regarding tax treatment and the potential for double taxation constitute significant disincentives to the securitization of small business loans.

The lack of standardization of small business loans is also often cited as hindering the development of a secondary market. Under Secretary of the Treasury Frank Newman told the Committee on September 9, 1993, “[o]ne of the challenges of securitizing small business loans is the diversity of their credit terms, such as collateral requirements and repayment schedules, which in turn, reflect the underlying diversity of the business activities being financed.” Ms. Jehl stated, “[l]ack of standardization is an impediment to the growth of the secondary market for small-business loans.” She predicted, however, that if other obstacles were removed the market might develop standards for loans suitable for securitization. She further stated, “with today's computer technology and cash flow analysis you can take a lot of different types of loans and create a synthetic security out of them.”

5. Benefits of small business securitization

The Committee believes that securitization of small business loans will increase the supply of capital available to small businesses, and reduce the interest rates they pay. The Administration, the Federal bank regulatory agencies, the banking and securities industries, and the small business community share this view.

In his September 9, 1993 testimony, Under Secretary of the Treasury Frank Newman agreed that securitization has the potential to increase lending to, and reduce interest rates for, small businesses.

> [B]ecause small- and medium-sized business loan originators can sell packages or pools of these loans to investors ***1918** as collateralized debt securities, the originators will free up resources that can be used to make more such loans.***By making such loans more liquid, securitization may also make them more attractive both to originate and to hold.

He went on to say securitization “could enable investors who do not lend directly to small businesses–such as pension funds, insurance companies, trust departments, and other institutional and private investors–to invest in small business loans made by other financial institutions."

On behalf of the Board of Governors of the Federal Reserve System, Governor John LaWare said "many of [S. 384's] provisions will prove helpful in encouraging the development, through the securitization process, of a secondary market for small business loans. We also support the bill's approach of promoting this development by relying on the private sector rather than involving the government through yet another guarantee program." He identified benefits to both issuers and investors through securitization of small business loans:

Both sales and purchases of securitized pools, then, offer improved diversification and a greater selection of risk and return alternatives. Purchases of securities backed by loans may be particularly valuable to smaller banks that do not have the capability of geographically diversifying their lending or diversifying according to industrial sector.

Edward Yingling expressed the support of the American Bankers Association for S. 384 at the September 9, 1993 hearing. Brad Nordholm, Corporate Vice President of National Cooperative Bank and President of the Bank's Cooperative Funding Corporation subsidiary, predicted that banks could profit from securitization:

S. 384 gives banks the tools they may have been lacking: alleviation of the regulatory burden and favorable tax advantages. In addition to regulatory changes, this may be an important catalyst for banks to profit from "unbundling" their functions or originating, underwriting, closing and documenting, funding and servicing a loan in order to realize their comparative advantage and consistently be in the small business loan market. That's the link between community service and profitability that non-bank financial institutions have exploited.

On behalf of the Securities Industry Association, Marc Lackritz expressed support for securitizing small business loans in a September 20, 1993 letter:

Under the proposed bill, banks will be able to originate more small business loans without having to raise additional capital because the loans will be sold to investors rather than kept on the bank's accounting ledgers. Facilitating securitization of small business loans may also provide additional capital to institutions interested in expanding their small business lending activities. This, in turn, could lower costs to borrowers.

***1919** Small business managers also identify benefits from securitization of small business loans. John Rennie, Chairman and Chief Executive Officer of Pacer Systems, Inc., expressed the support of National Small Business United. He told the Committee on March 4, 1993, "By removing regulatory bars to small business loan securitization, [Subtitle A] would lower the perceived risk at the banking level and encourage loan availability."

6. Description of legislation

Subtitle A makes a number of amendments to the securities, banking, pension and tax laws to facilitate the securitization of small business loans and the development of a secondary market in securities backed by small business loans.

a. Definition of "small business related security"

Subtitle A amends the Securities Exchange Act of 1934 to define a new term, "small business related security." A "small business related security" refers to a security representing an interest in 1 or more promissory notes evidencing the indebtedness of a "small business concern," or providing for payments of interest and principal in relation to payments or projections of payments on such promissory notes. A business is considered to be a "small business concern" if it meets the requirements of Section 3 of the Small Business Act. The security must be rated in 1 of the 4 highest rating categories by a nationally recognized statistical rating organization, such as Standard & Poor's and Moody's. A security receiving such a rating is generally considered to be "investment grade" by the financial markets.

As did SMMEA, the bill as introduced addressed loans originated by insured depository institutions, credit unions, insurance companies, and similar institutions supervised and examined by a Federal or State authority. At the Committee's September 9, 1993 hearing, witnesses were asked whether loans by finance companies, some of which participate actively in the small business lending market, should be included. Under Secretary of the Treasury Newman replied, “it seems to me that fundamentally that makes good sense. There is no reason why any segment of the financial services industry should be prohibited needlessly from participating in this market that might help small businesses.” Federal Reserve Governor LaWare concurred, “I agree with that.” Accordingly, the Managers' Amendment adopted by the Committee at markup amended the Committee Print to allow small business loans originated by finance companies to be included within the scope of small business related securities.

b. Amendments to Securities laws

As did SMMEA, Subtitle A makes three changes to the Securities Exchange Act of 1934. These amendments relate to margin and securities delivery requirements, to allow issuers more time to pool and sell securities.

Most of the rules regarding settlement periods, extensions of credit, and the relationships among broker-dealers and between broker-dealers and their customers were drafted with the market for corporate equity and debt securities in mind. Transactions in ***1920** those securities typically settle within one week. A secondary loan market, however, essentially operates as a forward trading and delivery market. Because the loans to be included in the pool backing the securities are originated only after commitments to purchase the securities have been obtained, a settlement period of 4 to 6 months is necessary.

Accordingly, SMMEA contained the following three provisions for mortgage related securities. First, subject to such rules and regulations as the Federal Reserve Board adopts, an agreement for delivery of a mortgage related security may provide for delivery up to 180 days after purchase without being considered an extension of credit. Second, an agreement for delayed delivery of a mortgage related security against full payment of the purchase price within 180 days is not considered to be borrowing on that security. Finally, delayed delivery of a mortgage related security against full payment of the purchase price within 180 days is not considered an extension of credit on a security.

Subtitle A extends these provisions to cover small business related securities as well as mortgage related securities. This will make it easier for issuers of small business related securities to obtain commitments to purchase such securities before all of the underlying loans are originated. Commissioner Carter Beese testified favorably on these provisions:

> Based on its experience with SMMEA, the Commission's authority to act to address abuses that may arise, and the continuing application of registration and anti-fraud provisions of the federal securities laws to offerings of small business related securities, the Commission supports the proposed amendments to the federal securities laws included in S. 384.

c. Investment authority and registration of securities

Subtitle A contains a number of provisions, parallel to provisions of SMMEA, to provide financial institutions with the authority to purchase small business related securities. The legislation amends the Federal banking, thrift and credit union statutes to allow Federally-chartered financial institutions to own small business related securities. The legislation further provides that any corporation, trust or business entity created under Federal or State law may invest in small business related securities to the same extent they may (under banking or insurance law, for example) invest in securities issued or guaranteed by the United States or its agencies. Any State may, within seven years of enactment of the legislation, enact a statute prohibiting or providing for a more limited authority to invest in small business related securities by a corporation, trust or business entity chartered by that State.

As SMMEA did for mortgage related securities, Subtitle A provides that small business related securities are exempt from State securities registration provisions (“blue sky” laws) to the same extent as securities issued or guaranteed by the United States and its agencies. Small business related securities would remain subject to the registration requirements of the Federal securities laws. The legislation does not preempt State antifraud provisions or State ***1921** regulation of broker-dealers. Any State may, within seven years of enactment of the legislation, enact a statute requiring registration of small business loan securities on terms that differ from those applicable to securities issued by the United States. While

States are provided with this authority, the Committee expects that States will share this legislation's goal of encouraging the securitization of small business loans while maintaining appropriate investor protections.

d. Accounting, reserve and capital requirements for insured depository institutions

Subtitle A addresses an area not considered in SMMEA, namely the accounting treatment and reserve and capital requirements for insured depository institutions that sell small business loans with recourse. The legislation specifies certain accounting principles and reserve requirements for a “qualified” institution that sells a small business loan with recourse. First, the accounting principles applicable to the sale shall be consistent with generally accepted accounting principles. Second, the institution must establish and maintain a reserve sufficient to meet its reasonable estimated liability under the recourse arrangement.

The Committee agrees with a number of observers that the existing capital requirements for loan sales with recourse unnecessarily discourage the securitization of small business loans. However, the Committee also recognizes that capital requirements should be sufficient to maintain bank safety and soundness. As Governor LaWare expressed in his September 9, 1993 testimony, that “it is especially important to assure that banks maintain capital at a level commensurate with their risk exposure both to loans they have sold into pools and to the pools they have acquired.” He testified,

> even if accurate loss estimates were used, [establishing reserves] would still be of concern from a supervisory perspective because it does not take into account the possibility that actual losses may turn out to be substantially greater than expected losses. The role of capital is to serve as a buffer against such developments, and GAAP is silent on this aspect of risk exposure.

Therefore, for purposes of its applicable capital standards, the institution must include the amount of retained recourse in its risk-weighted assets. In this way the institution will continue to hold capital to absorb unexpected losses relating to the recourse retained.

To be “qualified” for this treatment, the institution must be well capitalized without regard to the accounting principles and reserve and capital requirements described above. The Federal banking agencies may also, by regulation or order, allow an adequately capitalized institution to qualify for this new treatment.

Subtitle A also limits the total amount of recourse retained by an institution with respect to sales of small business loans receiving the new treatment to 15 percent of the institution's risk based capital. The Federal banking agencies are given flexibility to increase this limit, by regulation or order, as experience in ***1922** securitizing small business loans is gained. Furthermore, an insured depository institution's capital shall be determined without regard to the new treatment for purposes of prompt corrective action under Section 38 of the Federal Deposit Insurance Act.

Governor LaWare testified that so long as the new treatment was “restricted to those institutions that, under current capital standards, are either well capitalized or are adequately capitalized and have the approval of their primary regulator,” and “there is a major limitation placed on the aggregate amount of retained recourse that is eligible” for the new treatment, the Board of Governors of the Federal Reserve “do not believe that the approach *** would threaten safety and soundness conditions, while it may encourage securitization and the availability of credit to small business firms.” The Committee believes that the provisions of Subtitle A should facilitate securitization of small business loans while preserving bank safety and soundness.

The Committee understands that the Federal banking agencies recognize that the current capital rules unnecessarily discourage the securitization of many types of loans, including small business loans, and is pleased that the Federal Financial Institutions Examination Council Recourse Working Group is determining whether to recommend changes to reporting and capital rules for the treatment of sales of assets with recourse. Accordingly, at the discretion of the appropriate Federal banking agency, the provisions of Subtitle A will not apply if the aggregate amount of capital and reserves required under the agency's revised capital regulations with respect to the sale of a small business loan with recourse does not exceed the amount that would be required under Subtitle A. The Committee encourages the Federal banking agencies to act expeditiously to modify capital rules in a manner that will facilitate securitization while assuring safety and soundness.

e. Transactions by pension funds

The Employee Retirement Income Security Act of 1974 (“ERISA”) is the principal Federal statute safeguarding the pension plans of American workers. Since passage of ERISA, pension fund assets have grown substantially, so that pension funds are now among the largest participants in our financial markets. In order to protect pension plan participants, sections 406 and 407 of ERISA prohibit certain transactions between pension plans and plan fiduciaries. Currently, the Department of Labor provides an exemption under these laws to enable pension funds to purchase mortgage backed securities. This makes the pool of pension fund dollars available to homebuyers.

As Thomas Richmond, First Vice President of McDonald & Co. Securities, Inc., told the Banking Committee on March 4, 1993, “[s]mall businesses will have an easier time obtaining loans if they have access to the funds of pension plans and other institutions.” Subtitle A accordingly directs the Secretary of Labor, in consultation with the Secretary of the Treasury, to grant an exemption under ERISA for small business related securities as it did for mortgage backed securities. In providing for this exemption, the Secretary of Labor shall consider the importance of facilitating transactions in small business related securities, and the necessity ***1923** of imposing any term or condition to protect the rights and interests of plan beneficiaries.

f. Taxation of investment conduits

In the Tax Reform Act of 1986, Congress adopted provisions regarding the tax treatment of mortgage backed securities known as Real Estate Mortgage Investment Conduits (“REMICs”). REMICs are entities used to pool mortgages, and issue securities representing interests in those mortgages. The Tax Reform Act facilitated the private-sector securitization of mortgage loans by providing a non-exclusive election under which the REMIC would not be taxed, thus eliminating the potential double taxation of income earned by the mortgage conduit and the revenue paid to securities holders. While income earned by investors is subject to taxation, the REMIC itself is exempt from Federal taxes.

Subtitle A encourages the securitization of small business loans by clarifying the tax treatment of the resulting securities. The legislation calls on the Secretary of the Treasury to promulgate regulations providing for the taxation of small business loan investment conduits, and the holders of interests in those conduits, similar to the taxation of REMICs and holders of interests in REMICs. The Secretary shall make any necessary adjustments to take into consideration the purpose of facilitating the development of a secondary market in small business loans, the differences between mortgages and small business loans, and differences in securitization practices. “Small business loan investment conduit” is defined as an entity, substantially all of the assets of which are small business loans.

As is currently the case with the REMIC rules, this new tax treatment is not exclusive and would apply only if the taxpayer elected to use it. Testifying on behalf of the Public Securities Association on March 4, 1993, Patricia Jehle of Bear, Stearns and Co. indicated that extending REMIC treatment to pools of small business loans would encourage securitization of those assets.

7. Conclusion

The amendments in Subtitle A to the securities, banking, tax and pension laws should facilitate the securitization of small business loans. Testifying before the Banking Committee on March 4, 1993 on behalf of the Public Securities Association, Patricia Jehle expressed support for S. 384, the predecessor of Subtitle A. She stated,

> PSA supports S. 384 because it represents a sound approach to addressing the illiquidity of the small-business loan market. The bill correctly identifies and specifically addresses the vast majority of legal and regulatory impediments

that currently exist for a purchaser of small-business related securities.

As SEC Commissioner Carter Beese stated,

S. 384 would remove a number of legal and regulatory barriers that could limit the expansion of the market for the securitization of small business loans, both on the supply and demand side. As such, it certainly should ease the ***1924** process of securitization. A separate issue is the degree to which a secondary market for small business loans will develop. That issue will be determined by the marketplace and the unpredictable factors that drive that marketplace.

E. SUBTITLE B–CAPITAL ACCESS PROGRAMS

Subtitle B provides Federal support for State small business lending initiatives, known as Capital Access Programs, that successfully encourage banks to make small business loans. This will help States that already have such Programs, and lead more States to adopt such Programs.

1. Description of Capital Access Programs

Since 1986, 14 States have adopted Capital Access Programs. The Programs encourage banks to make small business loans that are somewhat riskier than conventional bank loans, without compromising bank safety and soundness. The Programs thus help small businesses obtain loans that might not have been made otherwise.

The Capital Access Programs utilize a portfolio insurance concept, rather than loan-by-loan guarantees. When a bank decides to participate in a Program, a reserve fund is established to cover losses from a portfolio of loans that the bank makes under the Program. Each participating lender has a separate, earmarked loss reserve fund.

Each time a participating bank makes a loan under the Program, the borrower makes a premium payment into the reserve fund. The borrower's payment typically is from 1.5% to 3.5% of the loan amount. The bank matches the borrower's payment. The State then matches the combined total of the borrower's payment and the bank's payment. The bank can recover the cost of its contribution from the borrower, such as by increasing the interest rate or charging a fee. Premiums and fees can be financed as part of the loan.

For loans enrolled under a Capital Access Program, a bank may have a reserve fund of up to 14% of the total amount of the loan portfolio. Accordingly, the bank could be covered for losses of up to 14% on that portfolio. The bank thus has the ability to sustain a higher loss rate than it tolerates on its conventional loans. The bank must still make prudent lending decisions, however, for it remains at risk for any losses that exceed the coverage provided by the reserve fund. Because the bank retains an incentive to make prudent lending decisions, it is not necessary for the State to review the bank's loan underwriting.

2. Experiences of the States

In 1986, Michigan became the first State to adopt a Capital Access Program. As of September 1, 1993, the Program has assisted banks to make 2,325 small business loans totalling $116,116,524. (See Statement of Steven M. Rohde, submitted on September 9, 1993) Roughly 21% of those loans, totalling over $24 million, have gone to start-up businesses (defined as businesses with no established sales). Loans have ranged in size from $400 to $1.7 million, with an average loan size of approximately $50,000. 56 Michigan ***1925** banks, representing 81% of statewide commercial banking assets, have enrolled loans under the Program.

Matching deposits made by the State of Michigan total approximately $5.1 million. As this has supported over $116 million in private sector lending, Michigan has effectively leveraged its program funds by a factor of approximately 23 to 1.

Of the 2,325 loans enrolled under the Program, claims have been filed on 119, or 5.1% of the total. Chargeoffs of loan principal have totalled $3,795,865, or 3.3% of the total loan amount of $116,116,524. Analyzing chargeoffs on seasoned loans (loans made prior to January 1, 1992), Steven Rohde concluded “[i]n dollar terms, losses under the program appear to be running approximately 5 times a normal bank loss rate.” In his submission to the Committee, he further stated:

Generally, losses under the program have been well within the capacity of the individual reserve funds to absorb. Of the 119 claims, the reserve fund earmarked for the particular bank has been sufficient to fully cover 100% of the claim for 111 of these claims, or 93.3% of the total number of claims. Indeed, most banks have been able to significantly grow the amount in their reserve fund over time.

In addition to Michigan, the following States are implementing Capital Access Programs: Arkansas, Connecticut, Indiana, Massachusetts, Minnesota, New Hampshire, Oklahoma, Oregon, Utah, Vermont and West Virginia. According to information received by the Committee from the States, over 600 loans have been enrolled under these Programs, totalling over $26 million. Edward Yingling, Executive Director for Government Relations of the American Bankers Association, told the Committee, “[w]e have talked with bankers in those states that are trying this approach, and they believe this approach has real potential to enhance lending to small businesses.”

Testifying on September 9, 1993, James Zafris, President and Chief Executive Officer of Danvers Savings Bank, Danvers, Massachusetts, stated:

One key aspect of the Massachusetts program is that it is run by bankers for small business persons. *** The program has been well-received once people understood how it works. *** The initial outlook and response to this program appears to be quite positive.

Colorado and Delaware have recently established Capital Access Programs; however, no loans had yet been made as of September 1, 1993. The Executive Director of the Colorado Housing and Finance Authority wrote on September 8, 1993:

The Colorado Housing and Finance Authority is in the process of starting its own small business loan program, called the Colorado Credit Reserve Program, also based on the Michigan program. So far, we have had tremendous support from the Colorado banking community, which has indicated a willingness to make these small loans if their risk is minimized. Our Board of Directors is confident that ***1926** this program will have a significant positive impact on the small business development efforts in our state.

3. Description of legislation

Subtitle B would provide Federal support for eligible State programs that encourage small business lending. The Federal role is limited to approving State programs, confirming that the States are enforcing agreements with participating lenders, and providing reimbursement payments to the States. The legislation assigns these responsibilities to the Secretary of Housing and Urban Development (“the Secretary”).

a. State eligibility requirements

To be eligible, a State program must meet five requirements. First, a State agency must be designated to implement the program. Second, the State must complete all legal action necessary to implement the Program by that agency. Third, the State must commit at least $1 for every 2 State residents to fund the State's contributions to reserve funds. This is designed to encourage lender participation and to ensure that the State program embraces pools of loans large enough to diversify risk. Fourth, the State must develop a form of participation agreement consistent with the Federal Program to be signed by participating financial institutions. Finally, the State must execute a reimbursement agreement with the Secretary. Existing Capital Access Programs can qualify for reimbursement if they meet those criteria.

b. Terms of Participation Agreements

A State may enter into a participation agreement with any financial institution that the State determines, after consultation with the appropriate Federal banking agency, has sufficient lending experience and financial and managerial capacity to participate. A determination by a State to allow a financial institution to participate may not be reviewed by the Secretary. The participation agreement must specify the terms for allocating premium charges between the borrower and the lender. Together, the charges paid by the borrower and the lender must be at least 3 percent, and not more than 7 percent, of the enrolled loan. The State's contribution must be at least equal to the amount paid by the borrower and the lender.

Each participating lender may determine the terms and conditions of its loan agreements with its borrowers on loans enrolled under a Program. The legislation imposes minimal requirements on loan eligibility: the loan must be used for a business purpose; the loan may not be used to finance passive ownership of real estate; and the borrower may not be an officer, director, shareholder or affiliate of the lender. The borrower must have fewer than 500 employees at the time of the loan's enrollment. In addition, the enrolled loan may not be a prior debt owed to the institution or an affiliate. The American Bankers Association's Edward Yingling noted the limited Federal involvement approvingly:

> A very positive feature of this proposal is that it is to be administered at the state level, providing necessary flexibility in recognition of diverse small business needs on the ***1927** state and local level. Flexibility is paramount in small business lending.

If the lender decides to enroll a loan or a portion of a loan, it must file a form with the State, stating that it has complied with the participation agreement. The lender must also forward the premium charges paid by it and the borrower. The State may not condition enrollment of a loan upon review of the lender's credit underwriting.

c. Reserve funds

The State must establish a separate reserve fund for each participating financial institution. The premium charges paid by the lender and the borrower, and the contributions from the State, are placed in that reserve fund. When a participating financial institution charges off all or any portion of an enrolled loan, it may file a claim for reimbursement from its reserve fund. The institution must represent that its action is in accordance with the participation agreement. Unless the institution has made a representation or warranty in enrolling a loan or filing a claim that it knew to be false, the State must pay the claim from the institution's reserve fund.

Participating States will submit quarterly reports to the Secretary, indicating the total amount of State contributions eligible for reimbursement. Within 30 days, the Secretary must provide the State with a reimbursement equal to 50% of the State's eligible contributions. Subtitle B authorizes an appropriation of $50 million to fund these reimbursements. Participating States must also submit annual reports to the Secretary indicating the number of borrowers financed under their Programs, the total amount of loans enrolled, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

d. Conclusion

Testifying on behalf of the Savings & Community Bankers of America, James Zafris of Danvers Savings Bank summed up Subtitle B as follows:

> The “Small Business Capital Enhancement Act of 1993” would provide federal support for states that have Capital Access Programs. Under the legislation, the federal government would reimburse a participating state for one-half of the state's contribution, and authorize $50 million to cover the federal government's half of the program. I am fully and wholeheartedly supportive of this measure. It would be money well-spent.

On behalf of the American Bankers Association, Edward Yingling testified, “this type of program's potential return on investment in terms of creating small business jobs and establishing longstanding productive businesses would be more than cost effective and deserves our support.”

On September 15, 1993, Secretary of Housing and Urban Development Henry Cisneros wrote to express his support for S. 478. He stated,

***1928** S. 478 assigns HUD a limited role in certifying States' participation, funding the Federal share of each State's loss reserve fund, and confirming that States are enforcing agreements with participating lenders in their jurisdictions. I believe this is a role that HUD can perform.

TITLE III: PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

A. INTRODUCTION

Title III of the Community Development, Credit Enhancement, and Regulatory Improvement Act contains 33 provisions designed to foster a more efficient and effective regulatory process and to reduce the paperwork burden and other unnecessary regulatory burden on financial institutions. It reflects recommendations and suggestions from the Federal banking agencies, the Administration, banking organizations and consumer advocacy groups, and includes initiatives sponsored by several Committee members.

1. FFIEC study

Through several recent pieces of legislation, particularly the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), the Committee has taken significant steps to reform bank and thrift regulation in order to make it as coherent as possible within a system of multiple regulatory agencies and overlapping jurisdiction. These legislative reforms have served to improve supervision and strengthen the nation's deposit insurance system.

At the same time, Congress has recognized the need to eliminate unnecessary regulatory burden on insured depository institutions. Section 221 of FDICIA required the Federal Financial Institutions Examination Council (FFIEC), in consultation with individuals representing insured depository institutions, consumers, community groups and other interested parties, to conduct a comprehensive study of regulatory burden. Comprised of representatives from the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, FFIEC is responsible for promoting uniformity in the regulation and supervision of financial institutions.

In Section 221, Congress instructed FFIEC to review all policies, procedures, recordkeeping and documentation requirements used to monitor and enforce compliance with laws administered by the Federal banking agencies or the Secretary of the Treasury in order to determine whether such policies, procedures, and requirements impose unnecessary burdens on insured depository institutions. In addition, Congress directed FFIEC to identify any revisions that could reduce unnecessary burdens on insured depository institutions without in any respect diminishing compliance with or enforcement of consumer laws in any respect or endangering the safety and soundness of insured depository institutions.

Section 221 of FDICIA concludes by requiring a report to Congress within one year of enactment. FFIEC filed this report on December***1929** 17, 1992. Many of the recommendations contained in the report have been included in Title III.

2. Clinton administration initiatives

The legislation also builds upon initiatives undertaken by the Clinton Administration. On March 10, 1993, President Clinton unveiled a program to increase credit availability. According to a joint statement released by the Federal Deposit Insurance Corporation, the Federal Reserve Board of Governors, the Office of Thrift Supervision, and the Office of the Comptroller of the Currency, "[t]he four federal regulators of banks and thrifts recognize that in the last several years the buildup of certain regulations and practices has become overly burdensome."

The interagency statement targeted several areas of the regulatory process for improvement ranging from paperwork reduction to small business lending. In the words of the President, "[t]he initiative avoids the regulatory excess and duplication we've seen, and focuses on real risks within our financial institutions."

As part of their initiative, the regulatory agencies pledged to eliminate unnecessary paperwork, minimize the disruptive effect of examinations, centralize examination in multi-bank organizations, and develop a regulatory appeals process. Title III of the Community Development, Credit Enhancement, and Regulatory Improvement Act reinforces and expands upon this effort.

3. Legislative initiatives

Finally, Title III incorporates the important work of several Senators in the area of regulatory improvement and paperwork reduction. Several significant bills addressing regulatory burden were introduced in the 103rd Congress prior to the Committee's passage of S. 1275. On January 28, 1993, Senators Shelby, Mack, Inouye, Wallop, and Heflin introduced S. 265, the “Economic Growth and Regulatory Paperwork Reduction Act.” Senators D'Amato, Bond, Shelby, Bennett, Domenici, and Mack introduced S. 1124, the “Depository Institutions Regulatory Improvements Act” on June 17, 1993. Finally, on June 24, 1993, Senators Dole and D'Amato introduced S. 1151, the “Credit Crunch Relief Act.”

Title III of S. 1275, the “Community Development, Credit Enhancement, and Regulatory Improvement Act,” draws on all three pieces of legislation. In particular, Title III includes numerous sections previously contained, in whole or in part, in S. 265, the “Economic Growth and Regulatory Paperwork Reduction Act,” as well as significant sections contained in S. 1124, the “Depository Institutions Regulatory Improvements Act.”

B. DESCRIPTION OF LEGISLATION

Title III reduces the regulatory and paperwork burden on depository institutions by requiring the bank and thrift agencies to conduct a top-to-bottom review and streamlining of existing regulations and guidelines, to coordinate examinations, and to modernize reporting. The Title also contains a number of amendments to existing statutes to eliminate unnecessary requirements that, on balance, add more to administrative compliance burden than to bank safety and soundness. In addition, Title III requires studies of the ***1930** impact of risk-based capital standards, the impact of the payment and nonpayment of interest on reserves, and ways to reduce the paperwork burden involved in processing a consumer and small business loan. All of the provisions in this Title are intended to eliminate unnecessary paperwork and other compliance burdens, without hindering effective banking supervision.

The Committee believes that meaningful paperwork reduction and regulatory improvement requires concerted and coordinated action by the Federal banking agencies. Our system of multiple Federal banking regulators, each with broad authority, has resulted in many instances of inconsistent and duplicative regulation. A bank holding company organization may expect to be examined by as many as four Federal banking agencies, as well as the State banking authorities in many cases. In several instances, the Federal banking agencies have adopted different regulations and policy statements based on the same statutes or to address the same supervisory concerns. For example, four different regulations implement the same statutory mandate contained in the Change in Bank Control Act of 1978. Likewise, the definition of the term “branch” varies from agency to agency.

The Federal banking agencies have recognized the problems of regulatory burden and multiple sources of regulation and, in 1992, entered into an agreement to achieve uniformity prospectively on matters of regulatory interpretation. The Committee believes that more work is needed in this area to simplify and harmonize Federal regulation. Therefore, a number of the Title III provisions require the Federal banking agencies to consider and address the burden of existing administrative requirements, to streamline existing regulations and written policies, and to work with the other Federal banking agencies to harmonize regulations, guidelines, forms and notice requirements.

Title III also contains a number of specific statutory changes designed to reduce unnecessary burden on depository institutions and the Federal banking agencies. Several of these provisions are modeled on measures previously endorsed by this Committee or the Senate or suggested in the FFIEC Study on Regulatory Burden completed in December 1992. Certain provisions are intended to codify agency interpretations, which will provide additional legal certainty.

Further explanation of the specific burden-reduction measures in Title III follows.

1. Considering compliance burden in establishing new regulations

Title III requires the Federal banking agencies, in determining the effective date and compliance requirements for new regulations imposing additional requirements on insured depository institutions, to consider–consistent with safety and soundness and the public interest–both the administrative burdens that the regulations would place on depository institutions (including smaller institutions) and the benefits of the regulations.

This provision will supplement the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act, in order to ensure that an unreasonable compliance burden is not created. Section***1931** 302 does not supersede statutorily mandated effective dates for regulations.

2. Streamlining and making uniform regulations and written policies

Title III requires the Federal banking agencies to streamline their regulations and written supervisory policies within two years in order to improve efficiency, reduce unnecessary cost and eliminate unwarranted constraints on credit availability. At the same time, the Federal banking agencies must remove regulatory inconsistencies, and outmoded or duplicative requirements. Further, the bill requires the agencies to make uniform regulations and guidelines implementing a common statutory scheme or supervisory concern, harmonize publication requirements and eliminate duplicative or otherwise unnecessary information in forms. These requirements apply to existing requirements as well as to requirements established in the future. More detailed explanation of the bill's streamlining steps follows.

a. Streamlining of regulations and written policies

Streamlining, for purposes of Title III, requires a top-to-bottom review by each Federal banking agency of its regulations, as well as its written supervisory policies and guidelines. The Committee understands that some of the banking agencies have already commenced such a review. The bill provides a timetable requiring the agencies to report to Congress on their progress after one year and again at the end of the two year period for completing this streamlining.

By extending the review beyond regulations promulgated by the agencies, the Committee seeks to address the concern that much of the paperwork and compliance burden on depository institutions results from the Federal banking agencies issuing written policies, supervisory letters and similar guidelines that have the effect of establishing norms or requirements that depository institutions will be expected to follow.

Review Requirements for Internal Policies by Smaller Banks–Regulations and guidelines of the Federal banking agencies often require depository institutions to develop written internal policies for various areas such as asset and liability management and investments. Questions have been raised as to whether it is appropriate or effective to require the same detailed written policies at smaller institutions as at larger banking organizations. Banks having fewer than 10 employees represent approximately 17 percent of U.S. banks but may be asked by examiners to show that they maintain the detailed written internal policies that much larger institutions would use. The Committee intends that, as part of the general regulatory review, the agencies will evaluate the effectiveness of maintaining these requirements for smaller institutions.

b. Joint agency action to make regulations and guidelines uniform

Beyond requiring streamlining of regulations and guidelines by each agency, section 303 requires the Federal banking agencies together to make uniform the different regulations and written policies***1932** that are based on a common statutory scheme or supervisory concern. The Committee is concerned that the fragmented regulatory system has led to inconsistent and overlapping regulations and guidelines. As noted, the Federal banking agencies signed an interagency agreement in 1992 to pursue uniformity in new regulations and interpretations. To further this step, S. 1275 requires the

Federal banking agencies to make uniform existing regulations and written policies as well as future rules and policies.

Regulations issued under statutes administered by the Federal banking agencies, or to address common supervisory concerns or goals, and the various supervisory guidelines issued by the Federal banking agencies must be reviewed by the agencies for unnecessary differences and made uniform. In some cases, it is expected that this will lead to elimination of requirements imposed by one agency but not another. In other cases, the Federal banking agencies may find that uniformity consistent with sound supervision warrants applying a requirement across the board that previously applied only to institutions regulated by one of the Federal banking agencies.

The uniformity required by this provision is not intended to result in unreasonable, unwarranted or nonsensical requirements that would add to burden, as this would be inconsistent with the legislation's purpose. In appropriate cases the agencies are encouraged to make joint issuances. In addition, where differences in requirements must remain, the agencies should prominently highlight and explain the differences, so that users will have clear notice of any remaining areas of difference among regulations or guidelines relating to a common statutory scheme or supervisory concern.

The Federal banking agencies remain subject to the requirements of the Administrative Procedure Act and other provisions governing rulemaking. Accordingly, the Federal banking agencies are encouraged to solicit and consider the views of interested persons and the general public on regulations and written policies and guidelines that should be modified.

3. Eliminating duplicative forms and harmonizing notice requirements

Title III requires the Federal banking agencies to work together to eliminate, to the extent practicable, requests for duplicative or otherwise unnecessary information in connection with applications and notices and to harmonize any inconsistent publication and public notice requirements. This requirement is based on a recommendation contained in the FFIEC Study. The purpose of this provision is to eliminate duplication in forms and notice requirements involved in, for example, acquisitions, mergers, consolidations, purchases or sales of assets, assumptions of liabilities, charter conversions, conversions from mutual to stock form, establishing or operating new deposit-taking facilities or branches or agencies, and engaging in new activities.

The Committee is concerned that institutions not be required to submit the same information, in different forms, to more than one regulator in connection with a particular transaction. Streamlining applications to eliminate information that is not needed in decision-***1933** making, such as immaterial details on premises and fixtures, also will be a step toward reducing burden.

4. Examinations must be unified in two years and may be conducted less frequently at certain institutions

a. Coordinated and unified examinations

Title III requires the Federal banking agencies to coordinate, within the agency and with the other agencies, examinations of depository institutions and their affiliates in order to minimize the disruptive effect on the operations of these institutions. In addition, Federal banking agencies are required to coordinate, to the extent possible, examinations with State bank supervisors.

Currently, separate Federal banking agencies examine at separate times what is essentially the same function (conducted by the same people in the same physical area of the banking organization), such as foreign exchange trading, capital markets activity, private banking, or commercial lending. For business reasons, these functions are often conducted through different legal entities, resulting in multiple examinations. These multiple banking examinations add to the burden already existing as a result of inspections and examinations of the same functions by nonbanking financial regulatory agencies, such as the Securities and Exchange Commission, and the State banking agencies. This provision is intended to eliminate the disruption of multiple exams.

Coordination of examinations alone will not relieve the burden of multiple examinations by Federal banking agencies of the same functions. Therefore, Title III also requires the Federal banking agencies to develop and implement a system within two years to conduct a unified examination by one Federal banking agency on behalf of all the Federal banking agencies.

The Committee believes that a unified Federal examination will permit the Federal banking agencies to apply their resources more effectively. The elimination of duplicate examinations will permit the allocation of examiner attention to areas that warrant more examination than they presently receive. Unified examinations will allow one Federal banking agency to assume responsibility for the correct assessment of a banking organization composed of a number of legal entities from the same consolidated perspective in which it is viewed by management and the market. This is expected to make the examination more meaningful.

b. Extended examination cycle for certain small institutions

Current law requires the Federal regulatory agencies to conduct on-site examinations every 12 months, except that institutions with total assets of $100 million or less that are well capitalized, have a "CAMEL" rating of 1, and have not undergone a change of control within one year of its last examination may be examined every 18 months.

The bill raises the asset threshold for the extended 18-month cycle to $250 million. The bill also adds the requirement that the institution not be under a formal enforcement proceeding or order to qualify for the exception. The Committee's legislation is not intended***1934** to limit in any way the discretion of the agencies to examine more frequently.

This provision significantly expands the exemption for small institutions, nearly doubling the number of banks that qualify for the extended cycle. The 18-month period is extendable to three years between Federal examination if the Federal banking agency relies on State examinations.

5. Simplifying call reporting and eliminating local newspaper publication requirement

Bank reports of condition (known in the industry as "call reports"), as well as savings association financial reports (known in the industry as "thrift financial reports"), and bank holding company consolidated and parent-only financial statements refer to public financial statements that the Federal banking agencies require banks, savings associations and bank holding companies to file on a quarterly basis.

a. Electronic filing and dissemination system

To reduce the burden of filing and to enhance the public availability of these reports, the bill requires the Federal banking agencies to develop an electronic filing and dissemination system. The Committee intends the system to be optional, so that depository institutions and holding companies may choose an automated form of filing if it is more efficient for them.

Electronic dissemination will enable users of this financial information to receive the information expeditiously in an electronic format as an alternative to requesting the information in a paper format. Such electronic reporting should foster more accurate and timely reporting and public dissemination of this information, which is vital for supervisory purposes and which often represents the only public information on the financial condition of a depository institution.

b. Simplification of reporting form

Title III also requires the Federal banking agencies to adopt a single call report form for "core" information, that is, earnings, liquidity, asset quality and other information required by all the agencies. The Federal banking agencies may continue to require separate schedules for reporting additional information that is required by one or more of the agencies. However, the Federal banking agencies are required to review any separate schedules the agency will require and eliminate any unnecessary requirements.

The bill also requires the Federal banking agencies to provide simplified instructions for completing the core pages and schedules described above and a detailed index to the instructions. The growing importance of these financial reports, and examiner expectation of compliance with detailed instructions, warrant review of the instruction manuals toward the above ends.

c. Report to Congress

Within one year, the legislation requires the agencies to report to Congress on any other measures that improve efficiency for filers and users of these financial reports. Consistent with the purpose ***1935** of Title III to achieve a more uniform, simplified regulatory system, the Federal banking agencies are required to provide a joint report containing recommendations agreed upon by the agencies.

d. Elimination of newspaper publication requirement

The Federal banking agencies generally require depository institutions to publish a statement of condition in the local newspaper. The Committee believes this to be an inefficient means of providing information to the public concerning the financial condition of an institution. Title III repeals the newspaper publication requirements. Nothing in this section affects the authority of the agencies to publish or otherwise release the reports to the public, or to require institutions to furnish copies to the public upon request.

6. Establishing regulatory appeals process

Title III requires each Federal banking agency and the National Credit Union Administration to establish an internal regulatory appeals process within 6 months. This process must be available to review material supervisory determinations and must provide for expeditious review under appropriate safeguards to protect the institution from retaliation by agency examiners. A depository institution may appeal material supervisory determinations, including those relating to examination ratings, the adequacy of loan loss reserve provisions, and significant loan classifications.

This provision should provide an avenue of redress for insured depository institutions and credit unions from uneven treatment by examiners. Material differences in examiner determinations have the potential to result in unfair differences in regulatory treatment of institutions. Evenhandedness is important to maintain confidence in our regulatory system. However, the appeals process also must be designed to lead examiners to make judgments based on their experience and the facts before them without being influenced by the possibility of an appeal. The Committee intends that the appeals process not impair, in any way, the agencies' litigation or enforcement authority.

7. Permitting Automated Bank Secrecy Act filing and requiring Treasury to publish rulings

a. Electronic filing of currency transaction reports

Title III requires the Secretary of Treasury to permit electronic submission of Currency Transaction Reports (“CTRs”) and other records banks are required to keep pursuant to the Bank Secrecy Act, at the election of the filer, and subject to terms and conditions set by the Secretary. This provision is based on a recommendation contained in the FFIEC Study.

Since March of 1987, the Treasury Department has operated a test program for magnetic media filings of CTRs. As of September, 1992, 379 banks were participating in this program, accounting for a total of 2 million CTRs filed in the first 9 months of the year. The Treasury Department has estimated that this magnetic media filing saved the financial services industry approximately $11 million in 1991 alone.

***1936** b. Bank Secrecy Act publication requirements

Title III requires the Secretary of the Treasury to publish rulings concerning the reports that banks must maintain for money laundering enforcement purposes pursuant to the Bank Secrecy Act. The legislation also requires the Secretary to provide an annually updated staff commentary to the regulations implementing the Act. Through this provision, the Committee is seeking to ease the regulatory compliance burden on institutions and promote compliance by requiring Treasury to make its important rulings accessible, as the Federal banking agencies do in their publicly available bulletins and other compilations of significant precedents.

8. Exempting business and similar loans from the Real Estate Settlement Procedures Act

Title III provides an exemption from the Real Estate Settlement Procedures Act of 1974 (“RESPA”) for credit transactions that are primarily for business, commercial or agricultural purposes, or to government agencies or instrumentalities. The exemption is consistent with regulatory interpretation by the Department of Housing and Urban Development, which administers RESPA. It will eliminate the requirement that lenders provide RESPA-mandated forms for credit transactions in which they are not needed to effectuate the purposes of the Act.

9. National banks' board of directors

The bill modifies the requirement in section 5146 of the Revised Statutes that two-thirds of the members of the board of directors of a national bank have resided in the State, Territory or District in which the bank is located, or within 100 miles of the office, for at least one year immediately preceding their election and during their continuance in office. The bill requires only a majority of the board members to meet this residency requirement. The Committee believes that this modification will make it easier to fill boards with qualified individuals, while ensuring the board will have sufficient representation by members with a local connection.

10. Audit committee requirement

Title III modifies section 36(i) of the FDI Act, which requires every depository institution with assets of $9 billion or more to have a separate audit committee, even if the depository institution is a subsidiary of a bank holding company that has an audit committee at the holding company level and is not experiencing any significant supervisory problems. The requirement of a separate audit committee was adopted by Congress in FDICIA based on an April 1991 recommendation by the General Accounting Office, which noted deficiencies in the independent audit function in many institutions that experienced problems and subsequently failed at taxpayer expense.

The bill permits an insured institution with assets of $9 billion or more that has a composite CAMEL rating of “1” to meet the audit committee requirements contained in section 36 of the FDI Act if comparable functions are provided at the holding company level by an audit committee that does not include any large customers of the institution.

***1937** 11. State regulation of real estate appraisals

Current law requires appraisal of real estate collateral for federally-related loans above certain de minimis levels by a State licensed or State certified appraiser. Title III directs the Federal Appraisal Subcommittee of the FFIEC to encourage the States to develop reciprocity agreements so that appraisers that are licensed by one State may perform appraisals in other States. The bill also prohibits a State agency from imposing excessive fees, as determined by the Appraisal Subcommittee, on out-of-State appraisers temporarily performing services in a State. The Committee's intent is to enable qualified appraisers to practice in a number of States without anticompetitive restrictions.

12. Acceleration of effective date for certain interaffiliate transactions

Under current law, transactions between a bank and affiliated companies are subject to certain restrictions contained in Sections 23A and 23B of the Federal Reserve Act. However, under the so-called “sister bank” exception, these restrictions do not apply to transactions among banks that are owned by the same holding company. These restrictions also apply to transactions between a thrift institution and affiliated companies, except that the “sister” exception for transactions between the thrift and affiliated depository institutions does not take effect until January 1, 1995.

Under the bill, the “sister” exception would become immediately available for well-capitalized thrift institutions owned by savings and loan holding companies, permitting certain transactions that may be more efficiently conducted between affiliates than under alternative structures. If a well-capitalized thrift makes use of this exception, it and its affiliated banks would become subject to cross-guarantee liability provisions between banks and thrifts in section 5(e)(6) of the Federal Deposit Insurance Act that otherwise would not be effective until August 9, 1994.

Nothing in Title III alters the provisions regarding interaffiliate transactions by a thrift owned by a bank holding company put into place in the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

13. Validation of public deposit collateralization

The FDIC, when acting as receiver for a bank, has authority to reject a burdensome agreement unless the agreement is in writing, was approved by the bank's board of directors, was executed contemporaneously with the acquisition of the asset, and has been an official record of the institution. This authority, under section 13(e) of the FDI Act, has caused concern among federal and local governmental entities that seek to collateralize government deposits in excess of $100,000. These entities are concerned that since the collateral pledged by the bank is often changed during the life of a deposit, the “contemporaneous” requirement is not satisfied, and therefore the FDIC could refuse to honor the collateralization agreement if the bank fails.

Title III provides that, with respect to deposits made by public entities, a collateralization agreement shall not be deemed invalid simply because of changes in the collateral made pursuant to the ***1938** agreement. The Committee intends to codify the written policy of the FDIC in this area.

14. Mandated ratio of market-to-book value for bank shares

The bill repeals the requirement adopted in FDICIA that the agencies prescribe, to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of a bank, thrift or holding company. Although a divergence between the market price of bank stock and the book value assigned to such stock may be an indicator of an internal accounting problem or other matters of supervisory concern, other factors, such as general stock market conditions, could affect the ratio so that it would not be a useful general indicator of an institution's condition. Accordingly, the Federal banking agencies will not be required to develop a minimum ratio of general applicability.

The Federal banking agencies will continue to be able to review the ratio of market value to book value for an institution's shares as an indicator of potential supervisory concerns.

15. Forming a Bank Holding Company

a. Notice process under Bank Holding Company Act

Title III creates a simplified process for obtaining regulatory approval for the formation of a bank holding company pursuant to section 3 of the Bank Holding Company Act. The bill provides an expedited process, under which a 30-day notice may be filed, instead of a full application, for obtaining regulatory approval of a simple reorganization of a bank into a bank holding company. The expedited process is intended for reorganizations of existing stand-alone banks into bank holding company corporate structures and is subject to several criteria: shareholders' interests must remain substantially the same before and after the reorganization, the bank and holding company must meet capital requirements, and the holding company may not engage in any activities other than those of banking or managing or controlling banks.

b. Exemption from securities registration

Title III would exempt the formation of certain bank holding companies from the securities registration requirements of the Securities Act of 1933. That Act generally requires securities to be registered with the Securities and Exchange Commission, but provides exemptions from that requirement. Title III adds an exemption for offers or sales of equity securities made in connection with the formation of a bank holding company under the simplified procedure established by this Title. The exemption is available if the holding company does not have any significant assets other than securities of the bank, the shareholders' rights and interests remain substantially the same, and the holding company has substantially the same assets and liabilities as the bank had prior to the transaction.

These provisions are intended to reduce the costs of forming a bank holding company and assist small banks in converting to holding companies so that they can take advantage of the flexibility ***1939** available to bank holding companies. The Senate previously adopted substantially similar provisions in 1988 in S. 1886.

16. Reducing post-approval waiting period for mergers

Title III modifies section 11 of the Bank Holding Company Act and section 18(c) of the FDI Act (the Bank Merger Act) to reduce the 30-day post-approval waiting period for mergers of banks or bank holding companies to a minimum of 15 days with the concurrence of the Attorney General and provided that the Attorney General has not adversely commented on the proposed merger prior to approval. Under current law, a merger of a bank or bank holding company approved subject to these sections cannot be consummated until 30 days after approval (with certain limited exceptions for emergency acquisitions). The purpose of this requirement is to provide the Attorney General adequate time prior to consummation in which to seek to block the merger in court. The requirement applies to all mergers, even those that have no effect on competition.

These provisions will allow the Attorney General to enter into agreements with the Federal banking agencies to reduce the waiting period to 15 days. The Attorney General may revoke any such agreement in an individual case by filing an adverse comment with the Federal banking agency prior to agency action on the merger. The bill is not intended to invalidate existing understandings between the Federal banking agencies and the Attorney General that are consistent with current law.

17. Permissible investors in bankers' banks

Under present law, national banks may purchase shares of an insured bank, or the holding company of an insured bank, that is owned by depository institutions and is engaged in providing services for such institutions (commonly referred to as a bankers' bank) so long as all other investors in the bankers' bank are insured depository institutions. Through a bankers' bank, a group of banks (in particular, small banks) can provide services to themselves on a cost efficient basis that they might otherwise have to purchase from correspondent banks.

Title III authorizes national banks to invest in a bankers' bank in which bank holding companies are investors. The bill also provides a federal savings association the same authority as a national bank to invest in a bankers' bank.

18. Reviewing certain bank service corporation investments

Section 5 of the Bank Service Corporation Act requires prior approval by a Federal banking agency of investments in a bank service corporation engaged in bank-eligible services. Title III requires instead that the bank investor provide prior notice as determined by the appropriate Federal banking agency. The prior notice procedure applies to an investment in a bank service corporation that performs only those services that the bank investor is authorized to perform directly.

An investment in a bank service corporation performing bank-eligible services is similar to the bank-eligible investments of banks in operating subsidiaries and limited partnerships. In both cases, ***1940** the institution invests in companies that are engaged in activities permitted for banks. Investments in operating subsidiaries and limited partnerships generally are subject to regulatory review under a notice procedure. Replacing the prior approval requirement for investments in bank service corporations engaged in these services with a prior notice requirement is intended to make the regulatory review process more uniform for these similar investments and is expected to reduce unnecessary delay and paperwork. The Federal banking agencies retain authority to require additional information and to prevent the investment.

19. Eliminating unnecessary merger competitiveness reports by Federal banking agencies

Title III removes the requirement in section 18(c) of the FDI Act (the Bank Merger Act) that the Federal banking agencies that do not have jurisdiction over a proposed merger nonetheless must provide a competitive report to the Federal banking agency responsible for determining whether a proposed merger should be denied on the grounds that it will adversely affect competition. This statutory requirement applies to all mergers, even those that have no effect on competition. The requirement creates an unnecessary paperwork burden for applicants, who must prepare multiple sets of submissions, as well as the Federal banking agencies, which must provide copies of merger application materials to each other and maintain reporting procedures.

The bill changes this procedure by eliminating the requirement that the agencies other than the one responsible for final approval provide competitiveness reports. To preserve the intent of Congress under the Bank Merger Act that uniform competitiveness standards should prevail, the bill maintains the requirement of a competitiveness report to the Attorney General by the Federal banking agency responsible for approving the proposed merger. The bill also provides that the other Federal banking agencies will receive notice of proposed mergers presenting significant competitiveness issues from the Attorney General.

Notice from the Attorney General will provide the other agencies the opportunity to report competitive information and analysis to the Federal banking agency responsible for making the regulatory determination and to the Attorney General. The Committee intends that the agencies will make such reports when they have relevant information or analyses that may relate to the competitiveness issue presented in the proposed merger. This may occur, for example, if the proposed merger or a similar combination in the relevant market were previously proposed to one of the other agencies, in which case the agency may have developed useful analysis.

20. Validating credit card accounts receivable sales

Title III allows the FDIC to waive in advance the right to repudiate an insured institution sale of credit card accounts receivable. Without such waiver authority, the FDIC may be obligated to repudiate such sales by banks that subsequently enter receivership proceedings. This has created an unnecessary legal uncertainty for buyers and sellers. The FDIC is not required to grant a waiver.

***1941** 21. Limiting potential liability on foreign accounts

Title III amends the Federal Reserve Act and the Federal Deposit Insurance Act to limit a domestic bank's future liability for deposits in a foreign branch in cases of a sovereign action by that country or in cases of war, insurrection, or civil strife. See Trinh v. Citibank, 850 F. 2d 1164 (6th Cir. 1988), cert. denied, 496 U.S. 912 (1990); Wells Fargo Asia Limited v. Citibank, N.A., 936 F.2d 723 (2d Cir. 1991), cert. denied, 112 S.Ct 2990 (1992). As national banks supervised by the OCC hold nearly two-thirds of all such deposits, and as the establishment of foreign branches is subject to approval by the Federal Reserve Board, these two agencies should work closely in issuing and implementing regulations issued pursuant to this section.

22. Eliminating outmoded dividend requirements for national banks

Title III repeals statutory restrictions contained in sections 5199 and 5204 of the Revised Statutes relating to dividend payment by national banks based on ‘net profits.‘ The Committee believes that these restrictions are unnecessary in light of subsequent enactments and are outmoded because they are based on cost accounting, rather than accrual accounting currently required for banks. Eliminating these provisions will not weaken dividend restrictions on national banks, but will eliminate the confusion the maintenance of the outmoded provisions has created.

23. Eliminating duplicative disclosures for home equity loans

Title III allows loan disclosures made under the Truth in Lending Act to substitute for duplicative disclosures required by the Real Estate Settlement Procedures Act (RESPA) if the loan is a mortgage loan secured by a secondary lien and if the information is disclosed in a manner that is no less conspicuous than is required by the Real Estate Settlement Procedures Act. This provision is intended to clarify that lenders providing disclosure in accordance with the Truth in Lending Act will not violate RESPA merely because the manner of disclosure was different from that required by RESPA. Effective disclosure of the information required by RESPA continues to be required.

24. Reports by the Federal banking agencies

a. Report on capital standards and their impact on the economy

The Secretary of the Treasury shall report to Congress in one year, after consultation with the Federal banking agencies, on the effect of risk-based capital standards on the safety and soundness of insured depository institutions and the availability of credit, particularly to consumer and small business concerns. The Committee expects the Secretary to consider whether it would be appropriate to reduce the compliance burden on community banks in performing risk-based capital calculations regardless of whether they have off-balance sheet items or other activities that would warrant complex reports.

***1942** b. Studies on the impact of the payment of interest on reserves

The Federal Reserve Board, in consultation with the FDIC, should report to Congress within six months on the monetary policy and banking implications of payment and nonpayment of interest to banks on their sterile reserves. Also within six months, the Office of Management and Budget, in consultation with the Senate and House Budget Committees, must report on the budgetary impact if interest were paid to banks or the deposit insurance funds.

The report by the Federal Reserve Board, in consultation with the FDIC, is intended to supplement a previous report to Congress by the Federal Reserve Board. The report must address the necessity, for monetary policy purposes, of continuing to require the maintenance of sterile reserves; the appropriateness of paying a market rate of interest to insured depository institutions or alternatively paying interest into the deposit insurance funds; and the monetary impact that failure to pay interest has had on insured depository institutions and their ability to compete with nonbanking competitors.

The report by the Office of Management and Budget and the Congressional Budget Office, in consultation with the Committees on the Budget of the Senate and the House of Representatives, must address the budgetary impact of paying a market rate of interest either to insured depository institutions or to the deposit insurance funds.

c. Study of streamlined lending process for consumer benefit

The Committee believes that the lending process could be simplified and still meet the needs of both borrowers and lenders. Title III requires the Federal Reserve Board, the Comptroller of the Currency and the Secretary of the Department of Housing and Urban Development to conduct a study of ways to improve the home mortgage, small business and consumer lending processes to reduce any burden on consumers and lenders. The above agencies are required to solicit comments from consumer groups, lenders and other interested parties. Within one year, the agencies must submit a joint report to Congress containing a summary of comments and indicating any legislative changes necessary to improve home mortgage, small business and consumer lending processes.

25. Repeal of outdated charter requirement for national banks

Title III repeals 12 U.S.C. 28, a statute enacted in 1864 that requires newspaper publication for 60 days after a new national bank charter has been granted. The Committee believes that newspaper publication after a charter has been granted is an inefficient method of providing public notice on the basis that this method has been surpassed by subsequent legislative and regulatory developments providing more effective notice, such as publication of notices of change in bank control and all charter approvals.

***1943** SECTION-BY-SECTION EXPLANATION

TITLE I: COMMUNITY DEVELOPMENT AND CONSUMER PROTECTION

SUBTITLE A: COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT

Section 101. Short title

The subtitle is called the “Community Development Banking and Financial Institutions Act of 1993.”

Section 102. Findings and purposes

The Congress finds that many of the Nation's urban, rural and Native American communities face critical social and economic problems. The restoration and maintenance of the economies of these communities will require coordinated strategies to promote long-term economic and social viability. Community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans and development services.

The purpose of the subtitle is to create a Community Development Financial Institutions Fund that will support a program of investment in and assistance to community development financial institutions.

Section 103. Definitions

The subtitle defines a “community development financial institution” as an organization that: has a primary mission of promoting community development; serves an investment area or targeted population; provides development services and equity investments or loans; maintains accountability to residents of an investment area or members of a targeted population; and is not an agency or instrumentality of government. The subtitle clarifies that a community development financial institution will not be considered to be a subsidiary of an insured depository institution or a holding company if the insured depository institution or holding company owns less than 25% of any class of voting shares and does not control the election of a majority of the board of directors.

Section 104. Establishment of national fund for community development

The subtitle creates a government-owned corporation known as the Community Development Financial Institutions Fund (“the Fund”). The Fund will be managed by an Administrator appointed by the President and confirmed by the Senate. The President may also appoint a Deputy Administrator with the advice and consent of the Senate. The Administrator will create a five person advisory board to advise on the policies of the Fund in a manner consistent with the Federal Advisory Commission Act. The Advisory board will consist of individuals with significant expertise in: community development and lending, operation of insured depository institutions, and needs of distressed communities, and representatives of local and regional government. Advisory board members will receive no compensation but will be reimbursed for travel and other expenses.

***1944** The subtitle specifies the powers and limitations of the Fund. The liability of the Fund and Federal government arising out of any investment in a community development financial institution is limited to the amount of the investment. The Fund is prohibited from issuing stock, bonds, debentures or other securities.

Section 105. Applications for assistance

The Board is required to establish the form and procedure for submitting applications for assistance. An applicant must submit a comprehensive strategic plan that contains a five year business plan, an analysis of community need, and a plan to coordinate assistance with existing government programs and private sector resources. An applicant must explain how its activities are consistent with any existing development plans, and how the applicant will coordinate with existing sources of liquidity and investment. An applicant must also describe how it will obtain funds to match Federal assistance; if it has previously received assistance, demonstrate that it has substantially met its performance goals and other program requirements and will expand its activities; and, if it has a prior history of serving an investment area or targeted population, demonstrate that it has successfully served those communities and will expand its activities. Assisted institutions will not be deemed to be agencies or instrumentalities of the United States.

Section 106. Community partnerships

An application for assistance may be filed jointly by a community development financial institution and a "community partner." A community partner is an entity that provides loans, equity investments, or development services. A community partner can include a depository institution holding company, an insured depository institution, insured credit union, a nonprofit organization, a State or local governmental agency, or a Small Business Investment Company. A partner is not required to have as its primary mission the promotion of community development. A partnership consists of an agreement between a community development financial institution and a community partner to perform certain services and activities in an investment area or targeted population. Assistance will be distributed to the community development financial institution. No assistance may be distributed to the community partner. Partnership applications will be considered based on criteria established in section 107. The Fund will negotiate performance goals for the partnership and specify other terms and conditions deemed appropriate.

Section 107. Selection of institutions

Applications will be selected on a competitive basis. The selection criteria described in the section are intended to ensure that assistance is awarded to applicants that can best serve distressed communities and possess the capacity to fulfill the purposes of the Act. The Fund is required to assist a geographically diverse group of applicants, including an appropriate mix of urban, rural and Native American communities.

***1945** Section 108. Assistance provided by the fund

Assistance may be provided in the form of financial and technical assistance. Financial assistance may be provided through equity investments, deposits, credit union shares, loans, and grants. In the case of assistance provided in the form of an equity investment, The Fund will only be permitted to hold transferable, nonvoting investments. The Fund will not be permitted to own more than 50 percent of the non-voting equity in a community development financial institution.

The Fund may not control the operations of the institution. Direct loan obligations may be incurred by the Fund only to the extent that appropriations are made in advance to cover their costs, as defined under current credit reform requirements. Technical assistance may be provided directly by the Fund, through grants and contracts, or by outside contractors.

Financial assistance may be used by assisted organizations to serve investment areas or targeted populations by developing or supporting: commercial facilities that promote revitalization, community stability or job-creation and -retention; businesses that provide jobs to low income people, are owned by low income people, or enhance the availability of goods and services to low income people; community facilities; the provision of basic financial services; and housing that is affordable to low income people (but only if credit for such housing is not available from other lenders). Assistance may not be used to attempt to influence an elected official, agency, officer or employee of any Federal, state or local government.

Not more than $5 million in assistance shall be awarded to any applicant within a three-year period. An exception to this provision allows a community development financial institution that is expanding to serve an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, to receive up $7.5 million within a three year period, of which not less than $2.5 million will be used to establish affiliates to serve the new investment area or targeted population.

Assistance, other than technical assistance, must be matched with funds from non-Federal sources on the basis of at least one dollar for each Federal dollar. Matching funds shall be at least comparable in form and value to the assistance provided. The Fund may reduce by up to 50-percent the matching requirement for applicants with severe constraints on available sources of matching funds, except that not more than 25-percent of all funds dispersed by the Fund in any year may have a reduced match.

In the case of community development financial institutions that receive assistance but are not otherwise regulated by the Federal government, the Fund will ensure they are financially and managerially sound. In the case of insured community development financial institutions, the Fund will consult with the appropriate Federal banking agency prior to providing assistance. Each assisted institution will enter into an agreement that requires the institution to comply with performance goals. Performance goals will be negotiated between each assisted institution and the Fund based on the strategic plan submitted as part of the application. The agreement will provide sanctions to be applied in the case of fraud, mismanagement or noncompliance.

***1946** The Fund will have the authority to sell its investments and loans but must retain the power to enforce limitations on assistance until performance goals are met. The Subtitle will not affect any authority of bank regulators to supervise or regulate insured financial institutions.

Section 109. Training

The Fund may operate a training program to enhance the capacity of community development financial institutions and other members of the financial services industry to undertake community development activities.

Section 110. Encouragement of private entities

The Fund may facilitate the creation of non-profit or for-profit corporations that will complement the activities of the Fund.

Section 111. Clearinghouse

The Fund is permitted to operate a clearinghouse to provide information on community development financial institutions.

Section 112. Recordkeeping and reports

Assisted institutions will maintain and the Fund will have access to records necessary to determine compliance with the Act. Assisted institutions must submit annual reports to the Fund. The Fund will annually evaluate the activities of the Fund and assisted institutions within 120 days of the end of each fiscal year. The Fund may conduct other studies necessary to further the purposes of the Act. The General Accounting Office will submit a report evaluating the structure, governance and performance of the Fund within 30 months after appointment of the Administrator. The Fund will permit public inspection of annual reports (including certified financial statements) that are submitted by assisted institutions.

Section 113. Investment of receipts and proceeds

Any dividends on investments or proceeds from disposition of investments, deposits or credit union shares that are received by the Fund as a result of assistance will used to further the purposes of the Act.

Section 114. Inspector General

An independent Inspector General will monitor the activities of the Fund.

Section 115. Liquidity enhancement

The Fund may use up to 5% of its appropriations to provide capital assistance to secondary market institutions that purchase loans from, or otherwise enhance the liquidity of community development financial institutions.

Section 116. Community Development Revolving Loan Fund

The subtitle permits the National Credit Union Administration Board to invest idle Community Development Credit Union (CDCU) Fund monies in Treasury securities and the accrued interest***1947** will be permitted to support the activities of the CDCU Fund. The Board may require loans made by the Fund to be matched by increased shares in the borrower credit union. Interest earned by the Board may be used for technical assistance.

Section 117. Study

The National Credit Union Administration Board will conduct a study of the role of community development credit unions in providing credit and financial services in inner city and rural areas, the failure rates of these institutions, and the feasibility of establishing a special examination force, mentor programs, a clearinghouse, and appropriate start up and permanent financing programs for these institutions.

Section 118. Regulations

The Fund will issue regulations 180 days after appointment of the Administrator.

Section 119. Authorizations

The section authorizes appropriations for the Fund of $60 million for FY 1994, $104 million for FY 1995, $107 million for FY 1996, and $111 million for FY 1997. The Fund may use not more than $5.5 million annually for administrative costs and not more than $50,000 for expenses of the advisory board. Money appropriated by Congress for the Fund is required to fall within the discretionary spending caps established in the Budget Act.

The section also authorizes additional appropriations of $5 million over 4 years for the Community Development Credit Union Revolving Loan Fund operated by the National Credit Union Administration Board.

SUBTITLE B: HOME OWNERSHIP AND EQUITY PROTECTION

Section 151. Consumer Protections for High Cost Mortgages

This section amends the Truth-in-Lending Act (TILA) to provide protections for consumers offered a class of mortgage loans delineated “high cost mortgages.”

Subsection (a) defines a “high cost mortgage” (“HCM”) as a closed-end loan secured by the consumer's principal dwelling, but not obtained for purchase or construction of the dwelling, in which:

(1) The annual percentage rate is more than 10 percentage points greater than the rate on a Treasury security of comparable maturity; or

(2) Points and fees exceed the greater of 8% of the loan amount or $400 (to be adjusted annually for inflation). This amount includes compensation paid to brokers and all direct and indirect compensation received by the creditor in connection with credit insurance. It does not include tax escrows or reasonable fees paid to a third party for title examination, document preparation, credit reports, notary services, and appraisal, provided that the charges are reasonable and paid to an unaffiliated third party with the creditor receiving no compensation.

***1948** Subsection (b) defines the specific disclosures required for high cost mortgages as “material”, thereby providing the consumer with a right of rescission (as with other important TILA disclosures) for up to three years in the event that the required disclosures are not provided.

Subsection (c) provides that a person who originates two or more HCMs in a given year or originates a HCM through a broker is a “creditor” and must comply with the requirements of this legislation.

Subsection (d) amends the TILA to require a creditor to conspicuously disclose that the consumer could lose his or her home for failure to meet the loan obligations and is not obligated to complete the agreement. The creditor also must disclose the annual percentage rate and the regular monthly payment or, for a variable rate loan, the annual percentage rate and a statement that the interest rate and monthly payment can increase, as well as the maximum possible monthly payment.

The required disclosures must be provided at least three days before consummation of the transaction. The section prohibits subsequent changes in the loan terms that affect the APR or monthly payment unless new disclosures are provided. The Federal Reserve Board may provide modification or waiver of the disclosures for bona fide emergencies.

This subsection further mandates that HCMs may not include terms providing for: prepayment penalties (except for loans repaid within 90 days); points, discount fees or prepaid finance charges on any loan amount refinanced by the same or affiliated creditor; balloon payments and negative amortization; or prepaid payments of more than 2 periodic payments consolidated and paid in advance from the loan proceeds. Inclusion of any of these terms is deemed a failure to deliver material disclosures as required by the TILA, thereby providing the borrower with rescission rights under that Act.

The subsection allows the Federal Reserve Board to exempt specific mortgage products or categories of mortgage products from these prohibitions if it finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protection. The Board is also required to prohibit acts and practices that it finds to be unfair, deceptive, or designed to evade the section.

Section 152. Civil liability

Subsection (a) provides that, in addition to other penalties available under the Act, a material failure to comply with requirements imposed by the subtitle carries potential civil liability in an amount equal to all finance charges and fees paid by the consumer.

Subsection (b) allows a State attorney general to bring actions in federal district court to enforce the provisions of this subtitle for up to three years following violations. The state must notify the appropriate Federal agency responsible for enforcement and the agency will have the right to intervene.

Subsection (c) eliminates holder-in-due-course protections for purchasers and assignees of HCMs. Consumers can maintain all claims and defenses in connection with HCMs against assignees ***1949** that could be asserted against creditors. Recovery is limited to the sum of the total amount paid by the consumer in connection with the transaction and the remaining indebtedness of the consumer. A person who sells or assigns the HCM must include a prominent notice of potential liability to the purchaser or assignee.

Section 153. Regulations; effective date

This section requires the Federal Reserve to issue regulations under the subtitle within 180 days of enactment of the Act. The subtitle will apply to HCMs consummated on or after 60 days after the regulations are promulgated.

TITLE II: SMALL BUSINESS CAPITAL FORMATION

SUBTITLE A: SMALL BUSINESS LOAN SECURITIZATION ACT

Section 201. Short title

Section 201 states that the Subtitle may be cited as the “Small Business Loan Securitization and Secondary Market Enhancement Act of 1993”.

Section 202. Definition of small business related security

Section 202 amends Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78c(a)) to add to the definitions in that section a new definition, “small business related security”, which becomes subparagraph (53).

The legislation defines a small business related security as one that is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, and that either (A) represents an interest in one or more promissory notes evidencing the indebtedness of a small business concern and originated by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or finance company; or (B) is secured by an interest in one or more promissory notes (with or without recourse to the issuer of the security) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraph (A).

An interest in a promissory note includes ownership rights, certificates of interest or participation in such notes and rights designed to assure the servicing of, or the receipt of, amounts payable under such note.

The phrase “similar institution which is supervised and examined by a Federal or State authority” includes an institution chartered and operating under the Farm Credit Act of 1971, as amended (12 U.S.C. Sec. 2001 et seq.).

A small business concern is a business that meets the criteria of a “small business concern” established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632(a)). As a result, any business that is classified as a small business concern by the Small Business Administration (SBA) falls within this definition. The SBA establishes criteria ***1950** based on size for businesses in every standardized industrial classification (see 13 C.F.R. Ch. I, Pt. 121).

The definition of small business related security is designed to promote a market for securities backed by small business loans. The definition provides a broad flexibility in designing the securities backed by small business loans. In addition to traditional securities backed by whole loans that provide investors with direct recourse to underlying promissory notes and any related collateral, the definition includes intermediate securities, such as participations or units of interest in other securities, and securities collateralized by pools of small business loan backed securities, or collateralized by participation interests in such pools or securities, and small business loan backed payment securities similar to collateralized mortgage obligations (CMOs). As required for mortgage related securities, securities that are secured by interests in small business promissory notes must provide for payments to investors that relate to the underlying obligations, but permit the creation of multiclass securities that provide investors with more predictability of cash flows than small business loans typically provide.

Section 203. Applicability of margin requirements

Section 7(g) of the Securities Exchange Act (15 U.S.C. Sec. 78g) provides that, subject to rules and regulations adopted by the Federal Reserve Board, broker-dealers can make agreements for delayed delivery of mortgage related securities for up to 180 days without being considered to have extended credit. Section 203 amends Section 7(g) by extending the coverage of that provision to small business related securities.

Section 204. Borrowing in the course of business

Section 8(a) of the Securities Exchange Act (15 U.S.C. Sec. 78h(a)) provides that, subject to rules and regulations adopted by the Federal Reserve Board, agreements for delayed delivery (for up to 180 days or within such shorter period as the Board shall provide) of mortgage related securities shall not be considered for purposes of that subsection as borrowing in the ordinary course of business. Section 204 amends Section 8(a) by extending the coverage of that provision to small business related securities.

Section 205. Small business related securities as collateral

Section 11(d) of the Securities Exchange Act (15 U.S.C. Sec. 78k(d)) provides that delayed delivery of a mortgage related security against full payment of the purchase price within 180 days is not considered an extension of credit on a newly-issued security. Section 205 amends Section 11(d) by extending the coverage of that provision to small business related securities.

Sections 203, 204, and 205 would facilitate the sale of small business related securities by applying the exemptions from margin requirements and credit prohibitions applicable to mortgage related securities to these securities. In SMMEA, these exemptions were made in recognition of the fundamental differences in marketing mortgage backed securities and other securities. Those provisions of the securities law recognize that the secondary market in mortgage ***1951** backed securities is essentially a forward trading and delivery market that requires a settlement period of up to six months. The extended period is required because the pool of loans backing the securities may be originated after a commitment for the purchase of the securities has been obtained. The exemptions provided in sections 203 and 204, however, are subject to such terms and conditions that the Federal Reserve Board may impose. Furthermore, the self-regulatory organizations have the authority under current law to prescribe rules, including margin rules, to address forward trading by their members in order to protect individual investors and assure that there will be adequate margin to cover adverse price movements in forward traded small business securities.

Section 206. Investment by depository institutions

Section 206 amends Section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. Sec. 1464(c)(1)), Section 107(15) of the Federal Credit Union Act (12 U.S.C. Sec. 1757(15)), and Section 5136 of the Revised Statutes (12 U.S.C. Sec. 24). The amendments authorize federally chartered savings associations, credit unions, and banks to invest in small business related securities. The Federal banking agencies, however, may prescribe regulations to ensure the safety and soundness of these institutions, including regulations prescribing minimum size of the issue (at the time of the initial distribution) or minimum aggregate sales price, or both.

Section 207. Preemption of State law

Section 106 of the Secondary Mortgage Market Enhancement Act (15 U.S.C. Sec. 77r–1) preempts State legal investment laws so that any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State may purchase, hold and invest in mortgage related securities to the same extent that they are authorized to purchase, hold and invest in obligations issued or guaranteed by the United States or any agency or instrumentality of the United States. Under Section 106, the term “person” includes a natural person, State government or political subdivision, or agency or instrumentality of a State government or political subdivision, which are enumerated in the definition of “person” under Section 3(a)(9) of the Securities Exchange Act of 1934. Section 207 amends Section 106, so that small business related securities receive the same treatment as mortgage related securities.

Section 106 also preempts State securities laws (called “Blue Sky” laws) to enable the issuer of mortgage related securities to file a single registration statement with the Securities and Exchange Commission rather than register the securities to the extent required under various State securities laws. Section 207 amends Section 106, so that small business related securities receive the same treatment as mortgage related securities.

As did SMMEA, Section 207 establishes an opportunity for any State to override these preemptions provided that the State specifically enacts legislation to accomplish this within seven years of the date of enactment of this legislation. Section 207 is necessary because many State laws designed to protect investors were enacted before securitization of small business loans was feasible or contemplated.***1952** Thus, these laws may have the unintended consequence of impeding the development of a secondary market in small business loans.

As with SMMEA, this Federal preemption provision is not intended to imply that small business related securities are equivalent to obligations of the United States for any purpose other than the purpose of authorizing them for investment. Neither is there any intent to suggest that small business related securities are directly or indirectly guaranteed by, or otherwise backed, by the United States. To the contrary, small business related securities may entail a level of risk that is not present in obligations of the United States, or its agencies.

Section 208. Insured Depository Institution Capital Requirement

Subsection (a) of Section 208 provides that the accounting principles applicable to the transfer of a small business loan with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles (“GAAP”).

Subsection (b) establishes treatment for reserve and capital requirements relating to a transfer by a qualified insured depository institution of a small business loan with recourse that is a sale under generally accepted accounting principles. As required under GAAP, the qualified insured depository institution must establish and maintain a reserve equal to an amount sufficient to meet its reasonable estimated liability under the recourse arrangement. The institution must also include the amount of the retained recourse in its risk-weighted assets for purposes of applicable capital standards and measures.

Subsection (c) provides that an insured depository institution is a “qualified insured depository institution” for purposes of this Section if it is well capitalized without regard to the accounting principles or capital requirements set forth in subsections (a) and (b). The appropriate Federal banking agency may, by regulation or order, allow an insured depository institution that is adequately capitalized without regard to the accounting principles or capital requirements set forth in subsections (a) and (b) to be a “qualified insured depository institution.”

Subsection (d) limits the aggregate amount of recourse retained by a qualified insured depository institution receiving the accounting and capital treatment of subsections (a) and (b). The total outstanding amount of recourse retained by such an institution shall not exceed 15 percent of the institution's risk-based capital, or such greater amount as may be established by regulation or order by the appropriate Federal banking agency.

Subsection (e) provides that if an insured depository institution ceases to be a qualified insured depository institution, or exceeds the limits under subsection (d), this section shall remain applicable to any transfers of small business loans that occurred during the time that the institution was qualified and did not exceed such limit. The accounting principles and reserve and capital requirements will continue to apply to such transfers of small business loans with recourse.

***1953** Subsection (f) ensures that an insured depository institution's capital shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under Section 38 of the Federal Deposit Insurance Act. This ensures that the prompt corrective action system implemented by Section 38 will not be affected by this Section.

Subsection (g) requires each appropriate Federal banking agency to promulgate final regulations implementing this section not later than 180 days after the date of enactment.

Subsection (h) authorizes the appropriate Federal banking agencies, at their discretion, to develop and apply alternative regulations if those regulations provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans with recourse does not exceed the aggregate amount required under subsection (b). This Section shall remain in effect with respect to transfers of small business loans with recourse by qualified insured depository institutions occurring before the effective date of such alternative regulations.

Subsection (i) defines the terms “adequately capitalized,” “appropriate Federal banking agency,” “capital standards,” “Federal banking agencies” “insured depository institution,” “other capital measures,” “recourse,” “small business,” “small business related security,” and “well capitalized.”

Section 209. Transactions in small business related securities by employee benefit plans

Sections 406 and 407 of Employee Retirement Income Security Act of 1974 (“ERISA”) (29 U.S.C. Sec. 1106, 1107) and Section 4975 of the Internal Revenue Code (“Code”) (26 U.S.C. Sec. 4975) prohibit profit-sharing and other employee benefit plans, as well as individual retirement plans and certain types of Keogh plans (“benefit plans”), from engaging in certain transactions with “parties in interest” under ERISA or “disqualified persons” under the Code. A violation of these “prohibited transaction” rules may generate excise tax or other liabilities under ERISA and the Code for such persons. ERISA also imposes certain duties on persons who are fiduciaries of benefit plans subject to ERISA.

Under ERISA, any person who exercises any authority or control with respect to the management or disposition of the assets of a benefit plan (“plan assets” is generally considered to be a fiduciary of such benefit plan. Any person (and certain affiliates) who provide services to a plan is a “party in interest” under ERISA and a “disqualified person” under the Code with respect to an investing benefit plan.

Under certain circumstances, the purchase of, and investment in, securities backed by a pool of assets, such as loans, may be treated as an investment in the underlying assets. Thus, each asset in the pool would be considered an asset of the benefit plan for certain purposes including the prohibited transaction provisions of ERISA and the Code. Consequently, many of the participants in a securitization transaction could be considered to be “parties in interest” or a “fiduciary” under ERISA or “disqualified persons” under the Code. In addition, there may also be an improper delegation***1954** of the responsibility to manage plan assets if a benefit plan that purchases these securities are deemed to own an interest in the underlying assets.

In 1981 and 1983, the Secretary of Labor adopted exemptions from the prohibited transaction provisions for transactions involving mortgage backed securities (Prohibited Transaction Exemptions 81–7 and 83–1). These exemptions have facilitated the securitization of residential mortgage loans by enabling benefit plans to purchase these securities while ensuring the protection of the beneficiaries of those plans.

Section 209 directs the Secretary of Labor, in consultation with the Secretary of the Treasury, to exempt transactions involving small business related securities, either unconditionally or on stated terms and conditions, from the restrictions of Sections 406 and 407 and the taxes imposed under section 4975 of the Internal Revenue Code of 1986. This exemption will enable benefit plans to purchase small business related securities under conditions that ensure that the beneficiaries in those plans are protected from potential conflicts of interest.

In providing for this exemption, the Secretary of Labor shall consider the importance of facilitating transactions in small business related securities, and the necessity of imposing any term or condition to protect the rights and interests of participants and beneficiaries of such plan. While the Secretary of Labor shall consider the importance of facilitating transactions in small business related securities in determining whether to grant an exemption from the prohibited transaction rules, section 209 does not affect requirements under Section 408(a) of ERISA that, for purposes of granting an exemption, the Secretary find that such transactions are in the interests of plan participants and beneficiaries, and that appropriate safeguards are present to protect the interests of the plan. Thus, section 209 parallels the current statutory exemption process for the Secretary's consideration of exemptions from ERISA's prohibited transaction provisions.

Section 210. Taxation of small business loan investment conduits

The Tax Reform Act of 1986 provided for the tax treatment of mortgage securities vehicles known as Real Estate Mortgage Investment Conduits (“REMICs”). REMICs are entities used to pool mortgages and issue securities representing interests in those mortgages. The Tax Reform Act facilitated the private-sector securitization of mortgage loans by providing a non-exclusive election under which the REMIC would not be taxed, thus eliminating the potential double taxation of income earned by the mortgage conduct and the revenue paid to securities holders. While income earned by investors is subject to taxation, the REMIC itself is exempt from Federal taxes.

Section 210 directs the Secretary of the Treasury to promulgate regulations providing for the taxation of a small business loan investment conduit and the holder of an interest therein similar to the taxation of a REMIC and the holder of interests therein. As is the case with the REMIC rules, the new regulations would apply only if the taxpayer elects to use them and are not intended to provide***1955** the exclusive means of determining the taxation of conduit entities used to securitize small business loans.

In promulgating these regulations, the Secretary shall make any necessary adjustments to the REMIC provisions to take into consideration the purpose of facilitating the securitization of small business loans through the use of small business loan investment conduits and the development of a secondary market in small business loans; differences in the nature of qualifying mortgages in a real estate mortgage investment conduit and small business loans and obligations; and differences in the practices of participants in the securitization of real estate mortgages in a real estate mortgage investment conduit and the securitization of other assets.

For purposes of this section, “small business loan investment conduit” means any entity substantially all of the assets of which consist of any obligation of a business that meets the criteria for a small business concern under section 3(a) of the Small Business Act, and that was originated by an insured depository institution, credit union, insurance company, or similar institution which is supervised and examined by an appropriate Federal or State authority, or finance company. “Any obligation” includes any participation or certificate of beneficial ownership therein.

SUBTITLE B: SMALL BUSINESS CAPITAL ENHANCEMENT

Short Title

This section designates the bill as the “Small Business Capital Enhancement Act of 1993.”

Section 251. Findings and purpose

This section states the findings that serve as a basis for the legislation. These include findings that:

(1) Small business concerns are a vital part of the economy;

(2) Adequate access to debt capital is critical to the development and success of small business;

(3) Commercial banks are the primary source of debt capital to small business;

(4) Commercial banks and other depository institutions have various incentives to minimize their risks in lending to small business;

(5) As a result of those incentives, many small businesses with sound financing needs are unable to obtain financing;

(6) Certain States have created small business capital access programs that provide access to debt capital for many small businesses flexibly and efficiently and consistent with safety and soundness regulations;

(7) A Federally supported small business capital access program would complement other programs that assist small businesses to obtain access to capital; and

(8) A Federal policy can stimulate and accelerate State efforts to implement small business capital access programs by creating an incentive to the States, while leaving program administration to the States.

This section states that the purposes of the legislation are:

(1) To promote economic opportunity and growth;

***1956** (2) To create jobs;

(3) To promote economic efficiency;

(4) To enhance productivity; and

(5) To spur innovation

by encouraging the States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to lend to a broad portfolio of small businesses.

Section 252. Definitions

The "Secretary" is the Secretary of Housing and Urban Development.

The term, "appropriate Federal banking agency," has the same meaning as stated in section 3 of the Federal Deposit Insurance Act, as amended, and, also, includes the National Credit Union Administration Board with respect to any credit union the deposits of which are insured under the Federal Credit Union Act.

The term, "early loan," means a loan that is enrolled by a participating financial institution with a participating State under the Program established by the bill, when the aggregate amount of loans previously enrolled by the institution under the Program is less than $5,000,000.

The term, "enrolled loan," means a loan made by a participating financial institution that is enrolled by a participating State in accordance with the bill.

The term, "financial institution," means any federally or State-chartered commercial bank, savings association, savings bank, or credit union.

The term, "participating financial institution," means any financial institution that has entered into a participation agreement with a participating State in accordance with the bill.

The term, "participating State," means any State that is approved for participation in the Program.

The term, "passive real estate ownership," means the ownership of real estate for speculation, trade, or rental, except ownership of real estate for the conduct of business or for construction or renovation.

The term, "Program," means the Small Business Capital Enhancement Program established under the bill.

The term, "reserve fund," means a fund established by a participating State and earmarked for a participating financial institution for the purposes of (1) receipt of premium charges paid by the participating financial institution and each borrower on an enrolled loan and contributions to the fund by the participating State, and (2) disbursements to cover losses on enrolled loans.

The term, "State," means any State of the United States and the District of Columbia.

Section 253. Approving States for participation

Subsection (a) requires a State to apply to the Secretary to become a participating State under the Program.

Subsection (b) states the criteria by which the Secretary approves States for participation in the Program. These include:

(1) Designation of a State agency to implement the Program;

***1957** (2) Completion of all legal actions necessary to implementation of the Program by the designated State agency;

(3) Commitment by the State of at least $1 for each two State residents to fund the State's contributions to the reserve funds to be maintained with respect to each participating financial institution;

(4) Development by the State of a form of participation agreement between the State and each participating financial institution that conforms with the requirements and intent of the bill; and

(5) Execution by the State and Secretary of an agreement providing for the Secretary's reimbursement of the State in accordance with the bill.

Subsection (c) provides for the participation in the Program of any State that already has established its own capital access program. The Secretary shall approve any such State for participation, if the State:

(1) Satisfies the criteria stated in subsection (a) and (b); and

(2) Certifies that each financial institution that has previously participated in the State program has satisfied the requirements of section 5 of the bill.

Subject to the preceding paragraph, each financial institution that previously participated in the State program would become a participating financial institution under the Program. The Secretary's reimbursement obligation to a participating State would apply to loans made by the financial institution after the Secretary's approval of the State for participation in the Program.

If amendment of the participation agreement between a State and a financial institution is necessary to enable a State to become a participating State under the Program, the Secretary's reimbursement obligation to the State would apply only to contributions made by the State regarding loans enrolled following the amendment of the participation agreement.

A State that becomes a participating State pursuant to subsection (c) may implement the Program using reserve funds that accumulated under the State's previous program.

Subsection (d) requires the appropriation of $50 million to the Secretary without fiscal year limitation prior to the Secretary's approval of a State for participation in the Program.

Subsection (e) provides a mechanism for amendment of a State's form of participation agreement with the Secretary's approval after the State becomes a participating State under the Program.

Section 254 Participation agreements

Subsection (a) permits a participating State to enter into a participation agreement with any financial institution that the State determines, after consultation with the appropriate Federal banking agency, has sufficient commercial lending experience and financial and managerial capacity to participate in the Program. A determination by a State to allow participation in the Program by a financial institution is not reviewable by the Secretary.

Subsection (b) allows a financial institution to begin enrolling loans under the Program as soon as it executes a participation agreement with a participating State.

***1958** Section 255. Terms of participation agreements

Subsection (a) requires that the form of participation agreement between a participating State and participating financial institution conform with the requirements of section 6.

Subsection (b) requires that the participating State establish a separate reserve fund for each participating financial institution for the purpose of receiving premium charges paid by the borrower and institution and contributions from the State, and for making disbursements to cover losses incurred by the participating financial institution or as provided in subsections (d) and (r). Funds in the reserve accounts are subject to the State's control, but the State may allow a participating financial institution for accounting purposes to treat the premium charges paid by the institution and the borrower into the reserve fund and the interest thereon as an asset of the institution.

Subsection (c) allows the participating State to invest, or cause to be invested, monies in each reserve fund in deposit accounts at the applicable participating financial institution or in forms of investment that the State determines to be safe and liquid.

Subsection (d) provides that interest or income earned on monies in a reserve fund is credited to the reserve fund, except that the State may: (1) withdraw some or all of the interest or income, as permitted in the participation agreement; and (2) allow the participating financial institution, upon its withdrawal from the Program, to withdraw interest or income earned attributable to the premium charges paid by the institution and the borrower, and that remains in the reserve fund, if such withdrawal does not expose the participating State to any greater risk of loss than the risk of loss in the absence of such withdrawal.

Subsection (e) allows each participating financial institution to determine the terms and conditions of its loan agreements with its borrowers relating to loans enrolled under the Program, consistent with applicable law relating to usury and other matters.

With respect to lines of credit, the amount of the loan is the maximum amount that the borrower may draw down under the line of credit.

Subsection (f) prescribes the manner of enrolling loans under the Program. The participating financial institution files with the participating State a form prescribed by the State. The form must include a representation by the institution that it has complied with the participation agreement in enrolling the loan.

The participating institution must forward with the enrollment form the premium charges paid by the borrower and the institution or evidence that such charges have been deposited into the deposit account maintained by the State with the institution.

The participating institution is allowed in the absence of extenuating circumstances up to ten calendar days to file with the State the enrollment form and premium charges.

Upon receipt of the filing the participating State is obligated to enroll the loan and make its matching contribution to the reserve fund, unless the filing indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

***1959** Subsection (g) allows a participating financial institution to enroll with the State less than the full amount of the loan.

Subsection (h) provides that the minimum and maximum premium charges paid by the borrower and the participating financial institution shall be stated in the participation agreement, with the sum of the charges not less than 3 percent and not more than 7 percent of the enrolled loan.

The participation agreement shall specify the terms for allocating the premium charges between the borrower and the participating financial institution. If the institution pays any charge, it may recover the charge from the borrower in whatever manner it and the borrower agree upon.

Subsection (i) prohibits the participating State from imposing under the Program any restrictions or requirements on the terms and conditions of an enrolled loan, except as permitted in subsection (h) regarding the fixing of a minimum and maximum premium charge.

This subsection also prohibits the State from conditioning enrollment of a loan upon its review of the participating institution's credit underwriting.

Nothing in the bill affects other law applicable to the participating financial institution's business.

Subsection (j) requires that the participating State's contribution to a reserve fund be not less than the sum of the premium charges paid by the borrower and the participating financial institution.

Subsection (k) prescribes when and how a participating financial institution files a claim for reimbursement by a participating State from the reserve fund. The institution may file a claim only when it charges off all or any portion of an enrolled loan in accordance with its normal business practice applicable to non-enrolled loans. The claim form must include the institution's representation that its action is in accordance with the participation agreement and such other information as the participating State may require.

Subsection (l) provides that the amount claimed by the participating institution may include the principal amount charged off, not to exceed the amount of the enrolled loan, plus accrued interest and out-of-pocket expenses, if and to the extent provided in the participation agreement.

Subsection (m) specifies the manner of payment of claims by the participating State. Subject to the State's right to deny payment as provided in subsection (n), the State is obligated to pay the claim from the reserve fund promptly upon receipt of the claim.

If the funds in the reserve fund are insufficient to cover the amount of the claim, the participating State shall pay the current balance in the reserve fund. If the claim relates to an enrolled loan that is not an early loan, as defined in section 3, the participating State's payment shall be deemed to satisfy fully the claim. If the claim relates to an enrolled loan that is an early loan, the participating State shall pay any unpaid amount of the claim after additional funds are deposited into the reserve fund in accordance with the participation agreement and the unpaid balance on the claim does not exceed 75% of the current balance in the fund.

Subsection (n) allows the participating State to deny payment of a claim, if a representation or warranty made by the participating ***1960** institution at the time of enrollment of a loan or filing of a claim was known by the institution to be false at the time such representation or warranty was made.

Subsection (o) requires the participating financial institution to deposit into the reserve fund any amount it recovers from the borrower, less out-of-pocket collection expenses, following payment of a claim by the participating State.

Subsection (p) requires the participating financial institution at the time of filing a loan for enrollment to obtain from the borrower assurances that:

(1) The loan proceeds will be used for a business purpose;

(2) The loan will not be used to finance passive real estate ownership, as defined in section 3; and

(3) The borrower is not an “insider” at the financial institution, as set forth in subsection (p)(1)(A)(iii).

This subsection, also, requires that the participating financial institution assure the participating State that the enrolled loan is not a prior debt owed to the institution or an affiliate of the institution not covered under the Program.

The subsection further allows the participating financial institution to refinance a prior, non-enrolled loan made to a borrower by the institution or its affiliate and enroll with the State that amount included in the refinancing that constitutes additional or new financing.

This subsection, also, permits the inclusion in the participation agreement of additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of the bill.

For purposes of the prohibition in subsection (p)(1)(A)(iii) against insider loans, the subsection adopts by reference terms used in part 215 of title 12 of the Code of Federal Regulations, or any successor provisions.

Subsection (q) allows the participating State the right to terminate its obligation to enroll additional loans under the Program. The exercise of this right does not affect loans previously enrolled.

Subsection (r) allows the participating State to withdraw funds from the reserve fund to bring the fund balance down to the outstanding balance of all loans enrolled by a participating financial institution, whenever the balance of the enrolled loans is continually less than the balance in the reserve fund for a consecutive period of twenty-four months or more. This subsection also allows a participating financial institution, upon withdrawal from the Program, to withdraw from the reserve fund monies equivalent to the premium charges paid into the fund by the institution and the borrower, that remain in the reserve fund, if such withdrawal does not expose the participating State to any greater risk of loss than the risk of loss in the absence of such withdrawal.

Section 256. Reports

Subsection (a) requires a participating State to submit to the Secretary quarterly a report of its contributions to reserve funds during the prior quarter. The report must:

(1) Indicate the total amount of contributions;

***1961** (2) Indicate the amount of contributions that are subject to reimbursement by the Secretary, taking account of the limitations of section 8;

(3) Provide documentation of the applicability of any limitation on the Secretary's reimbursement obligation stated in section 8;

(4) Certify: (a) the accuracy of the information in the report; (b) the continued commitment of funds by the State required by section 4(b)(3), less funds actually contributed by the State to reserve funds; (c) there has been no unapproved amendment to any participation agreement or the form of participation agreement used by the State; and (d) continued implementation by the State of the Program in accordance with the bill and regulations issued under it.

Subsection (b) requires that each participating State submit to the Secretary annual data indicating number of borrowers financed under the Program, total amount of enrolled loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

Subsection (c) allows the Secretary to specify the form of the reports required by section 7.

Section 257. Reimbursement by the Secretary

Subsection (a) requires the Secretary within 30 calendar days following receipt of a report pursuant to section 7 to reimburse a participating State 50% of the contributions made by the State to reserve funds that are reported by the State pursuant to section 7 and are subject to reimbursement in accordance with sections 7 and 8. The Secretary shall reimburse States, as reports are received until all funds available are expended.

Subsection (b) prohibits reimbursement by the Secretary to a participating State for contributions made by the State to a reserve fund with respect to an enrolled loan made to a borrower with 500 or more employees at the time of the loan's enrollment.

Subsection (c) limits the amount of reimbursement by the Secretary to a participating State with respect to enrolled loans made to any single borrower or group of borrowers engaged in a common enterprise to $75,000 within any three year period. “Common enterprise” has the meaning stated in part 32 of title 112 of the Code of Federal Regulations, or any successor provisions.

Subsection (d) provides that, with respect to any contribution made by a participating State regarding an enrolled loan, where the aggregate amount of loans enrolled by a participating financial institution with the State is less than $2 million, the Secretary's reimbursement of the State shall not exceed the lesser of 75% of the sum of premium charges paid by the borower and institution, or 5.25% [75% of the maximum permitted sum of charges of 7%].

Subsection (e) provides that, where the aggregate amount of loans enrolled by a participating financial institution with the State is $2 million or more, the Secretary's reimbursement of the State shall not exceed the lesser of 50% of the sum of premium charges paid by the borrower and institution, or 3.5% [50% of the maximum permitted sum of charges of 7%].

***1962** Subsection (f) provides for the manner of calculation of the Secretary's reimbursement obligation, where the State's contribution is made to a reserve fund with respect to which the participating financial institution has enrolled loans causing the aggregate of loans enrolled by it under the Program to exceed $2 million.

Section 258. Reimbursement to the Secretary

Subsection (a) provides for the payment to the Secretary by a participating State of an amount calculated in accordance with subsection (b), whenever the State withdraws an amount from a reserve fund, as permitted in section 6(d) and (r). The payment is due within fifteen calendar days of any withdrawal.

Subsection (b) provides that the payment due the Secretary pursuant to subsection (a) is calculated by multiplying the amount withdrawn by the State from a reserve fund by a factor that is the ratio of (1) 50% of all contributions made by the State that were subject to reimbursement by the Secretary in accordance with sections 7 and 8 to (2) all contributions made by the State to all reserve funds, including any contributions made by the State under its own capital access program prior to the State becoming a participating State under the Program.

Subsection (c) allows the Secretary to use funds received pursuant to section 9 to reimburse States under section 8.

Section 259. Regulations

This section requires the Secretary to issue regulations to implement the bill.

Section 260. Authorization of appropriations

This section authorizes the appropriation to the Secretary of $50 million to carry out the bill.

TITLE III: PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

Section 301. Incorporated definitions

The terms “appropriate Federal banking agency,” “Federal banking agencies,” “insured depository institution,” and “insured credit union” are defined to have the same meanings as in the Federal Deposit Insurance Act and the Federal Credit Union Act.

Section 302. Administrative consideration of burden with new regulations

In setting the effective date of new regulations and imposing new administrative compliance requirements, the Federal banking agencies must now consider the burden and benefits of those requirements for depository institutions and their customers. The agencies should take into account the size of the institution and are specifically directed to give consideration to small-sized institutions.

Section 303. Streamlining of regulatory requirements

Each Federal banking agency must streamline its regulations and written supervisory policies within 2 years, removing regulatory inconsistencies, outmoded or duplicative requirements and ***1963** unwarranted constraints on credit availability. Where agencies have adopted different requirements in regulations or other general guidance to banks implementing a common statutory scheme or supervisory concern, the agencies must make their requirements uniform. The agencies must report on their progress after one year and again at the end of the two-year period for completing this streamlining.

Section 304. Elimination of duplicative filings

The agencies must work together to eliminate, to the extent possible, requests for duplicative and other unnecessary information in connection with applications and notices. In addition, the agencies are required to harmonize any inconsistent publication and public notice requirements they have adopted pursuant to regulatory authority.

Section 305. Coordinated and unified examinations

A. Coordination of multiple examinations

The Federal banking agencies must work together to coordinate examinations of insured depository institutions and their affiliates to minimize their disruptive effect. This will require coordination of examinations of an institution by each agency, as well as coordination among the agencies. The Federal banking agencies also must work to coordinate federal examinations with those conducted by State bank supervisors.

B. Unified examination

Within 2 years, the Federal banking agencies are required to conduct a unified examination of an institution and its affiliates by one agency on behalf of all of the agencies. The agencies are required to jointly establish a system for determining which agency will conduct the unified examination.

Section 306. 18-month examination rule for certain small institutions

Current law provides for an on-site examination of an insured depository institution every 12 months, except that the examination cycle is extended to 18 months for an institution with assets less than $100 million that 1) is well capitalized; 2) is well managed and has an outstanding composite condition (e.g., a CAMEL rating of “1”); and 3) has not undergone a change in control within one year of its last examination. This section raises the asset threshold for the extended 18-month cycle to $250 million. This change does not affect the existing discretion of the agencies to examine more frequently than is required. The section also provides that an institution under a formal enforcement proceeding or order is not eligible for the extended examination cycle.

Section 307. Call report simplification

To reduce the burden of filing and publishing reports of condition, commonly referred to as call reports, this section instructs the federal banking agencies to develop an electronic filing system under which an institution may file call report data by electronic ***1964** means. The section also instructs the agencies to develop a system for the electronic transmission of call reports to the public. In addition, within one year the agencies must report to Congress on any other measures that would make reporting and dissemination more efficient. The agencies must also work to adopt a single call report form for core information, which is required in the reports by all the agencies, and to provide simplified instructions and a detailed index to the instructions. Finally, each agency is required to review any separate schedules the agency will require to supplement the core call report in order to eliminate any unnecessary requirements.

Section 308. Repeal of publication requirements

This section repeals requirements in section 5211 of the Revised Statutes, section 7(a)(1) of the Federal Deposit Insurance Act and section 9 of the Federal Reserve Act for newspaper publication by a bank of its reports of condition. The section does not affect the public nature of this information.

Section 309. Regulatory appeals process

This section requires each Federal banking agency and the National Credit Union Administration Board to establish an internal regulatory appeals process for insured depository institutions within 6 months. The appeals process must be available to review material supervisory determinations and must provide for expeditious review under appropriate safeguards to protect the institution from retaliation by agency examiners. The term “material supervisory determinations” is defined to include determinations relating to examination ratings, adequacy of loan loss reserves, and significant loan classifications. The appeals process does not affect the authority of the agencies and the Board to take enforcement or supervisory action against an institution.

Section 310. Electronic filing of currency transaction reports

This section amends the Bank Secrecy Act to require the Secretary of Treasury to permit financial institutions and uninsured banks to maintain and submit electronically the currency transaction reports (CTRs) and other records currently required under the Act. The Secretary is authorized to prescribe terms and conditions for electronic filing. Electronic record-keeping and filing would be remain optional for banks.

Section 311. Bank Secrecy Act publication requirements

To ease burden on institutions and promote compliance, this section requires Secretary of the Treasury to publish all written rulings concerning the reporting for money laundering enforcement purposes or other requirements placed on banks under chapter 53 of title 31 of the U.S. Code. The Secretary also must provide an annually updated staff commentary to the regulations implementing the chapter.

***1965** Section 312. Exemption of business loans from Real Estate Settlement Procedures Act requirements

This section provides an exemption from the Real Estate Settlement Procedures Act of 1974 for credit transactions that are primarily for business, commercial or agricultural purposes, or to government agencies or instrumentalities.

Section 313. Flexibility in choosing boards of directors

This section replaces the requirement in section 5146 of the Revised Statutes law that two-thirds of the board of directors of a national bank reside in the area in which the bank is located with a requirement that a majority reside in the area.

Section 314. Holding company audit requirements

This section permits an insured institution with assets of $9 billion or more that has a composite CAMEL rating of “1” to meet the audit committee requirements contained in section 36 of the Federal Deposit Insurance Act if comparable functions are provided at the holding company level by an audit committee that does not include any large customers of the institution.

Section 315. State regulation of real estate appraisals

This section instructs the Federal Appraisal Subcommittee of Federal Financial Institutions Examination Council to encourage the States to develop reciprocity agreements so that appraisers licensed or certified by one State may perform appraisals in other States. The amendment also provides that a State agency may not impose excessive fees or burdensome requirements on out-of-State appraisers engaged in temporary practice in a State.

Section 316. Acceleration of effective date for interaffiliate transactions

This section permits transactions between a well-capitalized thrift institution and its affiliates. These transactions would be subject to the same restrictions currently applicable to transactions between a bank and its affiliates. If a thrift makes use of this provision, it will be subject to cross-guarantee liability provisions in section 5(e)(6) of the Federal Deposit Insurance Act that would otherwise not be effective until August 9, 1994.

Section 317. Collateralization of public deposits

Section 13(e) of the Federal Deposit Insurance Act permits the FDIC to disavow a collateral agreement unless the agreement is in writing, is approved by the bank's board of directors, was executed contemporaneously with the acquisition of the asset, and has been an official record of the institution. This section provides that in cases involving deposits made by public entities, the FDIC will not invalidate a collateralization agreement solely on the basis of changes in the collateral that were made in accordance with the agreement.

Section 318. Elimination of stock valuation provision

This section repeals the requirement adopted in the Federal Deposit Insurance Corporation Improvement Act of 1991 that the ***1966** agencies prescribe, to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of a bank, thrift or holding company for these institutions. The section does not preclude the agencies from comparing market value of shares to book value for purposes of assessing the safe and sound operation of an institution.

Section 319. Expedited procedures for forming a bank holding company

This section provides an expedited, 30-day notice process for obtaining regulatory approval of the reorganization of a bank into a bank holding company. The provision applies only if, after the reorganization: shareholders' interests remain substantially the same; the bank and holding company meet capital requirements; and the holding company does not engage in any activities other than banking or managing or controlling banks.

Section 320. Exemption of certain holding company formations from registration under the Securities Act of 1933

This section provides an exemption from the securities registration requirements in section 5 of the Securities Act of 1933 for transactions involving exchanges of shares of a bank for shares of a newly formed bank holding company under certain circumstances. The exemption applies when: the holding company does not have any significant assets other than securities of the bank; the shareholders' proportional share interests and other rights and interests remain substantially the same; and the holding company has substantially the same assets and liabilities as the bank had prior to the transaction.

Section 321. Reduction of post-approval waiting period for bank holding company acquisitions

This section reduces the 30-day post-approval waiting period for mergers involving bank holding companies to a minimum of 15 days section, provided the Attorney General concurs and has not adversely commented on the proposed merger prior to approval.

Section 322. Reduction of post-approval waiting period for bank mergers

Similar to section 321, this section reduces the 30-day post-approval waiting period for mergers of banks to a minimum of 15 days with the concurrence of the Attorney General and provided that the Attorney General has not adversely commented on the proposed merger prior to approval.

Section 323. Bankers' banks

National banks currently are authorized to purchase shares of an insured bank (or the holding company of the insured bank) that is owned by depository institutions and is engaged in providing services for such institutions (commonly referred to as a bankers' bank) so long as all other investors in the bankers' bank are insured depository institutions. This section amends Revised Statutes Sections 5136 (Paragraph Seventh) and 5169(b)(1) to authorize these investments by national banks in cases in which some or all of the ***1967** other investors are depository institution holding companies. This section also amends section 5(c)(4) of the Home Owners' Loan Act to provide a federal savings association the same authority as a national bank to invest in a bankers' bank.

Section 324. Bank Service Corporation Act amendment

This section replaces the “prior approval” requirement for an investment in a bank service corporation with a “prior notice” requirement. The “prior notice” standard of review is frequently applied by the Federal banking agencies for other types of bank investments in subsidiaries and limited partnerships.

Section 325. Merger transaction reports

This section removes the requirement that the two banking agencies lacking jurisdiction over a proposed merger provide a competitive report to the agency with jurisdiction. The Attorney General must notify the other agencies of any proposed merger that raises significant competitiveness issues and provide the other agencies with the opportunity to comment.

Section 326. Credit card accounts receivable sales

This section allows the FDIC to waive in advance the right to subsequently repudiate an institution's sale of its credit card accounts receivable. Without such waivers, the FDIC has repudiated such sales by banks that subsequently went into receivership.

Section 327. Limiting potential liability on foreign accounts

This section amends the Federal Reserve Act and the Federal Deposit Insurance Act to limit a domestic bank's liability for deposits in a foreign branch in cases of a sovereign action by that country or in cases of war, insurrection, or civil strife. The Federal Reserve Board is authorized to adopt regulations implementing this section, in consultation with the Comptroller of the Currency.

Section 328. Amendment to outdated dividend provisions

This section repeals statutory restrictions contained in sections 5199 and 5204 of the Revised Statutes relating to dividend payments by national banks out of the bank's “net profits.” The restrictions are unnecessary and outmoded since they are based on accounting methodology no longer utilized by banks.

Section 329. Elimination of duplicative disclosures for home equity loans

This section allows loan disclosures made under the Truth in Lending Act to substitute for duplicative disclosures required by the Real Estate Settlement Procedures Act of 1974 (“RESPA”) if the loan is a federally related mortgage loan secured by a secondary lien on residential property and if the disclosures made pursuant to the Truth in Lending Act contain all the information and are made as conspicuously as those required by RESPA.

***1968** Section 330. Report on capital standards and their impact on the economy

This section requires that the Secretary of the Treasury report to Congress in one year, after consultation with the Federal banking agencies, on the effect of risk-based capital standards on both the safety and soundness of insured depository institutions and the availability of credit–particularly to consumer and small business concerns.

Section 331. Studies on the impact of the payment of interest on reserves

Within 6 months, the Federal Reserve Board, in consultation with the FDIC, must report to Congress on the monetary policy and banking implications of payment and nonpayment of interest on sterile reserves. Also within 6 months, the

Office of Management and Budget, in consultation with the Senate and House Budget Committees, must report on the budgetary impact if interest on sterile reserves was paid to banks or to the deposit insurance funds.

Section 332. Streamlined lending process for consumer benefit

This section requires the Federal Reserve Board, the Comptroller of the Currency and the Secretary of the Department of Housing and Urban Development to conduct a study of ways to improve the home mortgage, small business and consumer lending processes to reduce burden on consumers and lenders. The above agencies are required to solicit comments from consumer groups, lenders and other interested parties. Within one year, the agencies must submit a joint report to Congress containing a summary of comments and indicating any legislative changes necessary to improve home mortgage, small business and consumer lending processes.

Section 333. Repeal of outdated charter requirement for national banks

This section repeals section 5170 of the Revised Statutes, an antiquated statute requiring newspaper publication for 60 days after a new national bank charter has been granted.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 27, 1993.

Hon. Donald W. Riegle, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1275, the Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993.

Because enactment of S. 1275 could affect receipts and direct spending, pay-as-you-go procedures would apply to the bill.

***1969** If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1275.
2. Bill title: The Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993.
3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 21, 1993.
4. Bill purpose: S. 1275 would authorize appropriations of $437 million over fiscal years 1994–1998 for assistance to community development financial institutions and small business capital formation. It also would make a number of changes that would affect the banking regulatory process, and would establish new consumer protections for certain types of high-cost mortgages.

Title I would establish a Community Development Financial Institutions Fund and would authorize the appropriation of $60 million for 1994, $104 million for 1995, $107 million for 1996, and $111 million for 1997 to provide financial and technical assistance to financial institutions that service distressed communities. It also would establish an Office of Inspector General for the fund and would authorize the appropriation of such sums as may be necessary for its operation.

The fund would be a wholly owned government corporation and would be responsible for establishing eligibility requirements for assistance and for determining what form the assistance would take. The fund could provide financial assistance through equity investments in institutions, deposits, credit union shares, grants, or loans (provided subsidy budget authority for the cost of the loans is provided in appropriation acts). No more than $5 million could be provided to any one financial institution, although an exception would be made for existing institutions expanding to new investment areas. In addition, institutions would be required to provide nonfederal matching funds equal to the federal investment in the institution.

Title I also would authorize the appropriation of $5 million over the 1994–1997 period to provide technical assistance and loans to low-income credit unions. The bill also would allow the National Credit Union Administration (NCUA) to invest in Treasury securities any balances in its community development revolving loan fund, and, subject to appropriations action, use the interest income to provide technical assistance to credit unions.

Finally, Title I would define high-cost mortgages for purposes of the Truth in Lending Act and would establish a number of requirements regarding such mortgages. The bill would require the Board of Governors of the Federal Reserve System to issue regulations to carry out these provisions.

Title II would alter the capital requirements on small business loans that financial institutions would sell to investors, and would create a loan guarantee program for small businesses. It also would require the Secretary of the Treasury to promulgate regulations ***1970** providing for the taxation of small business loan investment conduits similar to the taxation of real estate mortgage investment conduits.

Title III would make a number of changes affecting the banking regulatory agencies, including NCUA, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Federal Reserve. The agencies would be required to review all regulations with the aim of reducing regulatory burdens, to streamline reporting and examination procedures, and to conduct a number of studies. In addition, the bill would expands the number of institutions eligible to be examined every 18 months rather than every 12 months. Finally, the bill would require the Office of Management and Budget and the Congressional Budget Office (CBO) to report on the budgetary impact of paying interest on sterile reserves held by the Federal Reserve.

5. Estimated cost to the Federal Government:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The bill would result in lower FDIC spending for examinations of financial institutions. It would also increase the risk of deposit insurance losses because of the less frequent examinations and reduce capital reserves for certain types of small business loans. CBO estimates that the net budgetary impact of these changes would not be significant.

The costs of this bill fall within budget functions 450 and 370.

Basis of estimate:

Title I

Community Development Financial Institutions Fund.–CBO estimates that the fund would be established early in 1994. We expect that spending for administrative activities and technical assistance would begin in fiscal year 1994, but that assistance to financial institutions would not begin until fiscal year 1995.

CBO has based its spending estimates on the historical spending rate of other grant and loan assistance programs, particularly those that require matching funds. CBO cannot predict whether the fund would provide assistance in the form of equity investment, deposits, loans, or grants. The form in which assistance is provided could affect the rate of spending, as application procedures and distribution mechanisms may differ, but we expect the spending to remain in the range of other similar grant and loan programs.

The title authorizes such sums as may be necessary for the activities of the Inspector General. CBO does not expect these costs to be significant.

***1971** Community Development Revolving Loan Fund.–NCUA provides technical assistance and loans to low-income credit unions. To fund these activities, S. 1275 would authorize the appropriation of $2 million in 1994 and $1 million in each of the years 1995 through 1997. Based on information from NCUA, we expect that the agency would charge 2 percent interest on loans that would mature in five years. Based on historical experience to date, CBO does not expect any loans to be delinquent or to fail. Because NCUA is exempted from the provisions of the Federal Credit Reform Act of 1990, the community development revolving loan fund would have a different budgetary treatment from most credit programs. Thus, rather than showing the cost of the provision on a net present value basis, this estimate reflects the cash flows associated with the loan program, assuming appropriation of the necessary amounts. On this basis, we expect outlays to total $2 million in 1994, decreasing to —$1 million by 1997.

The bill also would allow NCUA to invest any community development loan fund balances in Treasury securities, and to use the interest income to provide technical assistance to credit unions. The use of this interest income, which is estimated to be about $100,000 annually, would be subject to appropriations.

High-Cost Mortgages.–Based on information provided by the Federal Reserve Board, CBO does to expect the Federal Reserve to insure significant costs to issue regulations required by the bill's amendment to the Truth in Lending Act.

Title II

This title would make changes in laws governing securities, bank capital, taxes, and pensions aimed at encouraging banks to make loans to small businesses and fostering a secondary market for small business loans.

Small Business Capital Enhancement Program.–Under this program, each state wishing to participate would establish a reserve fund. Participating financial institutions in such states could insure small business loans by enrolling the loan in the program and depositing a premium (between three and seven percent of the insured amount) into the reserve fund, which the participating state would match. The Secretary of the Department of Housing and Urban Development (HUD) would make quarterly payments to reimburse participating states for 50 percent of their reserve fund contributions. Claims by participating financial institutions against defaulted loans would be paid by each state from that state's reserve fund, subject to certain limitations. The bill would authorize appropriations of $50 million for this program. CBO estimates that outlays would occur over a four-year period, assuming appropriation of the authorized funds.

Financial Institution Reserves.–The bill would reduce the amount of capital that a financial institution must hold in reserve against small business loans that are sold to investors. Rather than reserving against the total amount of the original loan, institutions would be required to reserve against only that portion of the loan that exposes the institution to any risk. As a result, this provision would permit banks to increase their lending to small businesses with less capital backing than is required currently, although this ***1972** lending generally would be capped at 15 percent of total risk-based capital.

Among the various insured financial institutions, banks are responsible for the most lending to small businesses. According to the FDIC, banks hold over $160 billion in loans to small commercial and industrial borrowers. Over 50 percent of these small business loans are concentrated in smaller commercial banks, comprising about 15 percent of all domestic loans held by banks with less than $1 billion in assets. It is possible that increased exposure to the credit risks inherent in small business loans might increase the number of bank failures. While CBO cannot quantify the extent to which that risk might increase, we do not expect that additional insurance losses would be substantial because we believe that the regulatory agencies would monitor any risks associated with these loans and because the volume of such loans would not be substantial. Based on information from the banking regulatory agencies, we estimate that the costs associated with issuing regulations and monitoring any changes in risk-based capital levels would not be significant .

Taxation of Small Business Loan Investment Conduits.–The Joint Committee on Taxation (JCT) expects that a revenue loss would result from section 201, which requires the Secretary of the Treasury to promulgate regulations providing for the taxation of small business loan investment conduits similar to the taxation of real estate mortgage investment conduits. This estimate does not include an amount for such revenue loss because the JCT does not have a specific estimate available at this time.

Title III

Under current law, federal regulators examine healthy financial institutions with assets of less than $100 million every 18 months, instead of every 12 months as is done for other institutions. Title III would allow institutions with $100 million to $250 million in assets to undergo examination only once every 18 months as well. This extension could increase the probability of losses to the government's deposit insurance funds. Because the provision would apply only to well-capitalized institutions, we do no expect such losses, if any, to be significant.

The bill also would require regulators to coordinate examinations of financial institutions to avoid duplication. CBO estimates that these two provisions would save the banking regulatory agencies about $10 million annually. The allocation of these savings among the regulators would depend upon how the resources of the agencies and the state regulators are coordinated when conducting the unified exams. The OTS and OCC charge thrifts and banks for examinations, and any savings in administrative costs would reduce the fees that financial institutions pay to these agencies, resulting in no net budgetary impact. CBO estimates that reduced examination costs would result in annual savings of about $1 million to the FDIC, which does not charge fees for examinations.

Based on information from the banking agencies, CBO expects that the other provisions of this title would either be implemented in any event or would result in no significant cost or savings.

***1973** 6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. The JCT expects that a loss of receipts (tax revenues) would result from section 201, but does not have a specific estimate of the amount at this time. The FDIC could incur additional insurance losses as a result of the provisions affecting the frequency of examination and the amount of bank reserves. CBO estimates that such losses, if any, would not be significant.
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

7. Estimated cost to the State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Patricia Conroy, John Webb, Mary Maginniss, James Hearn, and Mark Booth.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

S. 1275 REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

Title III of the bill makes significant steps toward a more efficient and effective regulatory process for insured depository institutions. It requires the Federal bank and thrift agencies to consider and address the burden of existing administrative requirements and to streamline existing regulations and written policies. They must harmonize and make uniform differing regulations, guidelines, forms and notice requirements, both with respect to existing regulations and future issuances. The Federal banking agencies must also coordinate examinations, to minimize their disruptive effect on the operations of insured institutions.

Title III also reduces the paperwork and other unnecessary regulatory burden on financial institutions through specific statutory changes. Certain provisions codify agency interpretations, providing additional legal clarity. In addition, the Title requires studies of the impact of risk-based capital standards, the impact of the payment and nonpayment of interest on reserves, and ways to reduce the paperwork burden involved in consumer and small business loans.

Subtitle A of Title II reduces the regulatory burden on insured financial institutions seeking to securitize small business loans. The Subtitle makes a number of amendments to the securities, banking, pension and tax laws to facilitate the development of a secondary market in securities backed by small business loans. The Subtitle amends the margin and delivery requirements of the Securities Exchange Act of 1934, to allow issuers more time to pool and sell securities. The Subtitle also specifies certain accounting principles***1974** and reserve and capital requirements for "qualified" insured depository institutions that sell small business loans with recourse.

Subtitle A of Title I, establishing the Community Development Financial Institutions Fund, and Subtitle B of Title II, providing Federal support for certain State small business lending initiatives, do not impose any additional regulatory burden.

Subtitle B of Title I provides needed additional consumer protections in the case of certain abusive home equity loans. The Subtitle amends the Truth in Lending Act to define a class of non-purchase, non-construction loans with high interest rates. The Subtitle requires lenders extending such loans to provide additional disclosures, at least three days before consummation of the transaction. The legislation also prohibits such loans from including certain terms that are subject to abuse, including prepayment penalties and balloon payments. Subtitle B does not create a usury limit or prohibit loans with high rates or high fees.

ADDITIONAL VIEWS OF SENATOR BEN NIGHTHORSE CAMPBELL AND SENATOR PETE DOMENICI

We commend members of the Senate Banking Committee for a bipartisan effort in crafting this bill.

We are particularly pleased with the emphasis on helping rural areas and Native American communities contained in Subtitle A, the Community Banking and Financial Institutions Act. Language in the bill and in this committee report requires the Community Development Financial Institutions Fund to assist a geographically diverse group of applicants from urban, rural, and Native American communities.

Those of us in western states know that poverty and lack of access to credit are not just problems in inner cities, and we are pleased that the Banking Committee recognizes this fact as well. Often agricultural communities rely on one small, hometown bank for all their financial services. One bank may serve an area covering hundreds of square miles. Some rural communities are struggling economically, and rural banks can take advantage of this program.

Also, in Colorado and New Mexico as well as other states, Indian reservations lack financial resources and banking services which keeps Native Americans from developing local businesses. Financial institutions that primarily serve Native American communities would also be eligible for the CDFI Fund services provided under this proposal.

We plan to follow the progress of the CDFI Fund closely over the next several years to ensure proper representation of institutions that primarily serve rural and Native American institutions are fairly represented. If properly administered, this Fund will provide some much-needed help to these credit-starved communities.

Ben Nighthorse Campbell.
Pete V. Domenici.

***1975** ADDITIONAL VIEWS OF SENATORS SHELBY AND MACK

Although we voted to report this legislation out of committee, we did so with several serious reservations concerning this legislation's necessity and effectiveness. While we recognize the need to increase the pool of capital available for investment in underserved rural and inner city areas, we have several concerns about this measure.

The $382 million authorized in S. 1275 is a pittance compared to the capital that could be unleashed if private sector financial institutions were included in this initiative. The Community Reinvestment Act could be reformed to include appropriate incentives to encourage financial institutions to undertake significant community development activities. For example, if banks were to receive a safe harbor from costly protests in exchange for innovative community development activities, we believe you would see billions flowing into underserved communities.

Through their intransigent position on CRA, community groups have been shortsighted in considering what could be accomplished through the use of appropriate CRA incentives. Incorporating incentives into the CRA evaluation process would result in much more aggressive compliance, increasing exponentially the resources that could be brought to bear on the problems of distressed communities.

President Clinton's administration is in the process of reforming the Community Reinvestment Act compliance process. We look forward to seeing what the Administration proposes and are hopeful that the initiative will reduce the emphasis on unnecessary paperwork. Because the objectives of this legislation and the Community Reinvestment Act are similar, I again express my regret that this legislation did not include incentives to encourage close cooperation between mainstream financial institutions and community development financial institutions. The vigorous enforcement of the Community Reinvestment Act has resulted in increased competition between majority and minority owned banks. The objectives of the Community Reinvestment Act and S. 1275 are better met by encouraging cooperation among majority and minority owned financial institutions.

Despite our reservations over the cost of S. 1275 and the limits of its potential effectiveness, we voted to report this legislation out of committee because Title III contains provisions to reduce the regulatory burden on financial institutions. Some of these provisions were drawn from S. 265, the Economic Growth and Regulatory Paperwork Reduction Act. As the lead sponsors of S. 265, we are pleased that S. 1275 acknowledges the need to reduce the regulatory burden. However, we are deeply concerned that Title III does not go far enough at this time.

***1976** It is time to acknowledge that some provisions of the FDIC Improvement Act are unnecessary and overly stringent. Changing conditions in the banking industry warrant the repeal of provisions that amount to regulatory overkill and micromanagement. Other unnecessary and duplicative paperwork requirements should also be eliminated.

We will offer an amendment to S. 1275 to expand the regulatory relief provided by Title III. Since a majority of the Senate has cosponsored S. 265, we are confident that the Senate will support such an amendment and vote to reduce the regulatory burden on insured financial institutions. However, absent further expansion on the floor, Title III provides insufficient regulatory relief to insured financial institutions. Congress should address regulatory relief in a comprehensive manner to ensure maximum regulatory efficiency and minimal risk safety and soundness.

Richard Shelby.

Connie Mack.

S. REP. 103-169, S. Rep. No. 169, 103RD Cong., 1ST Sess. 1993, 1993 WL 444316, 1994 U.S.C.C.A.N. 1881 (Leg.Hist.)

END OF DOCUMENT