The original documents are located in Box 12, folder "10/29/74 S3838 Debt Obligations and Usury Ceilings" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

APPROVED
OCT 29 1974

Statement issued 10/29/74

To Archives 10/30

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day - October 29

October 26, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill S. 3838
Debt Obligations and Usury Ceilings

Attached for your consideration is S. 3838 sponsored by Senators Proxmire and Magnuson which:

- authorizes Federal regulation of debt obligations by financial institution holding companies;

- permits insured banks to charge five percent over the applicable Federal Reserve discount rate on certain loans, regardless of State usury ceilings;

- exempts certain borrowings and deposits from State usury.

Additional information is provided in Roy Ash's enrolled bill report (Tab A).

Arguments for Signing

1. There is a difference of opinion in the Federal financial community over Title I, which would give the Federal Reserve Board the discretionary power to regulate variable interest rate notes. Both the Treasury and the Federal Reserve Board testified in opposition to mandatory regulation by the Federal Reserve Board, but both now recommend approval of the legislation because this power is only discretionary.

2. As presently constituted, the Federal Reserve Board does not plan on using this power. The Treasury Department does not think it worth a veto simply to avoid having the discretion to exercise such power. Timmons feels the bill is politically important because Senators Mansfield and Brock are intensely interested in the relief to their states which will be provided under Titles II and III which provide for the temporary raising of state usury ceilings.

Arguments for Veto

1. Both OMB and the Council of Economic Advisers recommend veto because of the objectionable features of Title I. Even though this power to regulate has now been made discretionary, they feel it totally inappropriate for the Federal Reserve Board to have such power.

Options

-- Sign the legislation with a signing statement indicating your desire that the discretionary power to regulate variable interest rate notes not be exercised.

-- Veto the legislation with a message aimed at the problems in the future with any exercise of Title I.

Recommendations

GRF Sign S. 3838 (Tab B)	______ Veto S. 3838 (Sign veto statement Tab C)
Treasury Timmons Cole Areeda - defers to Treasury Federal Home Loan Bank Board National Credit Union Administration Board of Governors of the Federal Reserve System Federal Deposit Insurance Corporation Small Business Administration	Ash Greenspan

APPROVED
OCT 29 1974

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3838 - Debt obligations and usury ceilings
Sponsors - Sen. Proxmire (D) Wisconsin and Sen. Magnuson (D) Washington

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Authorizes Federal regulation of debt obligations by financial institution holding companies; permits insured banks to charge five percent over the applicable Federal Reserve discount rate on certain loans, regardless of State usury ceilings; and exempts certain borrowings and deposits from State usury ceilings.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Council of Economic Advisers	Disapproval
Department of the Treasury	Approval
Federal Home Loan Bank Board	No objection
National Credit Union Administration	No objection
Board of Governors of the Federal Reserve System	Approval
Federal Deposit Insurance Corporation	Approval
Small Business Administration	Approval
Department of Justice	Defers to other agencies
Securities and Exchange Commission	No recommendation

Discussion

Regulation of Variable Interest Rate Notes (Title I)

This Title would provide discretionary authority to the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Federal Home Loan Bank Board (FHLBB) to regulate the interest rates payable on debt obligations issued by parent holding companies and affiliates of Federally-insured institutions -- regardless of the intended use of the proceeds of the debt issue. Exempted from this regulatory authority would be debt obligations (a) of any bank holding company which has filed prior to the date of enactment an irrevocable declaration with the FRB to divest itself of all of its banks under section 4 of the Bank Holding Company Act, and (b) which are excluded from SEC registration and prospectus requirements under section 3(a)(3) of the Securities Act of 1933 (i.e., securities such as commercial paper issued by bank holding companies and their nonbank subsidiaries, normally offered and sold only to institutional investors in large denominations).

The intended effect of Title I would be to control the issuance and sale of variable interest rate notes, such as the $850 million offering recently completed by Citicorp. These holding company obligations are not considered deposits under present law, and hence are not subject to Federal regulation except for reserve requirements. Nevertheless, their relatively low denominations and early redemption features make them attractive competitors of time deposits along with other nondeposit market instruments presently available to the public. The result has been a growing concern within the Congress that unlimited offerings of this type in a climate of high interest rates could have a serious impact in terms of disintermediation from savings institutions and, consequently, on the continued availability of mortgage money.

Treasury and the Federal Reserve Board, in hearings before both banking committees of the Congress, opposed the imposition of Federal control over variable interest rate notes on the grounds that:

-- it would discourage savings by small investors and force them to bear the costs both of subsidizing borrowers and protecting financial institutions from the defects in our financial system

-- it would constitute a sweeping regulatory approach to deal with the specific problems of disintermediation involving banks and thrift institutions

-- it would disrupt the normal financing operations of many smaller holding companies which rely upon issuing obligations

-- it would unfairly discriminate against bank and savings and loan holding companies vis-a-vis other corporations and public utilities which are competitive in many similar lines of activity and which are potential issuers of such obligations

-- it would severely undermine efforts toward freer financial markets by involving the Government deeply in capital control.

Title I is inconsistent with the Administration's proposed Financial Institutions Act (S. 2591 and H.R. 10990), which would (a) relax and remove restrictions on the activities of savings and banking institutions; (b) eliminate self-defeating regulatory measures such as ceiling rates for time deposits; and (c) reduce the ultimate need for Government supervision, control, and enormous infusions of mortgage funds during times of credit stringency.

<u>Interest Rate Amendments Regarding State Usury Ceilings on Business and Agricultural Loans (Title II)</u>

This Title would temporarily authorize financial institutions and small business investment companies to charge five percent above the Federal Reserve discount rate on business and agricultural loans of $25,000 or more, regardless of State usury ceilings. This authority would not apply to loans made after July 1, 1977. The apparent congressional intent is that this cutoff date would provide sufficient time for the States involved to change their constitutions and laws. States not desiring to be covered by this Title, however, could enact legislation to override it.

Federal law presently limits national banks to charging the greater of one percent above the Federal Reserve discount rate, the rate permitted by applicable State law, or seven percent if no rate is fixed by State law.

In States where the availability of credit has been restricted or eliminated because of competitively determined market rates reaching levels prohibited under State usury laws (i.e., Arkansas, Montana, and Tennessee), the five percent leeway under Title II would provide a sufficient margin of return to reopen the channels of credit to many deserving corporate borrowers. At the same time, the provision allowing States to enact overriding legislation would preserve the traditional right of States to determine and assert their usury statutes.

The Comptroller of the Currency, the FRB, FDIC, and FHLBB supported legislation of this type in hearings before the Senate Banking Committee.

Availability of State Usury Ceilings to Certain Obligations Issued by Banks and Affiliates (Title III)

This Title would exempt borrowings of bank holding companies and bank deposits over $100,000 from State usury laws until July 1, 1977. As with Title II, the cutoff date is intended to give States the necessary time to change their constitutions and laws; and provision is made for States to enact overriding legislation.

The floor debate in the Senate indicates that these exemptions are intended to clarify or overcome deficiencies in the usury laws of California and several other States. California's statute, for example, has been interpreted as prohibiting bank holding companies from issuing variable rate notes yielding more than ten percent per annum -- thereby foreclosing debt obligations which are competitive with those recently placed by Citicorp in New York. Also, interest rates of bank deposits over $100,000 (unlike those under $100,000, which are set by the FRB) are not regulated and the interest rates are negotiated according to money market conditions. The question of whether the interest rate on these larger borrowings are exempt from the California usury law is apparently not clear.

The Administration did not have an opportunity to comment to the Congress on these exemptions during the legislative development of S. 3838, but would not have opposed them.

Conclusions and recommendation

Among the agencies commenting upon S. 3838 in its enrolled form, only the Council of Economic Advisers recommended disapproval. An apparent reason for this limited opposition is that the regulatory authority of Title I over variable interest rate notes would now be discretionary, whereas in earlier versions of the legislation it would have been mandatory. Nevertheless, the legislative history clearly indicates a Congressional intent that this authority be exercised.

Even though the Administration could support Titles II and III of the enrolled bill, we recommend your disapproval because of the objectionable features of Title I. A draft of a proposed veto message is attached for your consideration.

Director

Enclosures

FEDERAL HOME LOAN BANK BOARD
WASHINGTON, D. C. 20552
101 INDIANA AVENUE, N. W.

FEDERAL HOME LOAN BANK SYSTEM
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
FEDERAL SAVINGS AND LOAN SYSTEM

OFFICE OF THE GENERAL COUNSEL

October 16, 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel: HAND DELIVER

This is in response to your request of October 15, 1974 for the Board's views on enrolled bill, S. 3838.

Title I of the bill would authorize the Board, the Federal Reserve Board, and the Federal Deposit Insurance Corporation, in their discretion, to prescribe rules governing the payment and advertisement of interest on certain debt obligations of affiliates of banks or thrift institutions that are now subject to rate regulations of the agencies. Title II of the bill would temporarily allow financial institutions and small business investment companies to make business or argicultural loans in excess of $25,000 at a rate not more than 5% in excess of the Federal Reserve's discount rate without regard to State usury laws. Title III of the bill would temporarily allow a depositor to receive interest from a financial institution on a deposit which is not subject to Federal rate control regulations at a rate in excess of State usury ceilings without risking that the financial institution will assert the usury law as a reason not to pay the agreed rate.

The Board has no objection to the President's signing S. 3838.

Sincerely,

Charles E. Allen
General Counsel

William T. Nachbaur

William T. Nachbaur
Associate General Counsel

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/JLO:eor
October 17, 1974

Mr. W. H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Rommel:

This will acknowledge receipt of your memorandum of October 15, 1974, requesting our views and recommendations on enrolled bill S. 3838.

The National Credit Union Administration has no objection.

Sincerely yours,

John L. Ostby

JOHN L. OSTBY
General Counsel

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 17, 1974

Dear Mr. Rommel:

This is in response to your request for our views on S.3838, an Act "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

We strongly recommend that the President should veto this Act. Title I of the Act would enable the Fed to place "Regulation Q" interest rate ceilings on securities issued by types of institutions at present not subject to such regulations. The other parts of the Act give the Fed powers to set interest-rate ceilings at discount rate plus 5 percent in States now having usury laws and also in those not having such laws at present.

The Act would be a major step in the wrong direction -- an effort to keep interest rates at levels lower than those which borrowers are willing to pay in view of market conditions that are, of course, influenced by expected price trends. Such regulations lead to the movement of funds into unregulated areas and/or to a wholly arbitrary allocation of the available supply of credit among those who have a demand for more credit than is available at the regulated rates.

The Administration has been trying to get Congress to adopt a reform that would gradually free the credit market from harmful regulations of this sort. This Act moves in the opposite direction and would represent highly objectionable legislation.

Sincerely yours,

Alan Greenspan

Mr. Wilfred H. Rommel
Assistant Director for
  Legislative Reference
Office of Management and Budget
Washington, D.C.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 21 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Your office has requested the views of this Department on the enrolled enactment of S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Title I of the enrolled enactment would authorize the Federal Reserve Board to regulate debt obligations of a parent holding company or an affiliate of a member bank, regardless of the use of the proceeds within the holding company. It would exempt from regulation any bank holding company which has filed prior to the date of enactment an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all its banks under section 4 of the Bank Holding Company Act. Similar authority would be granted to the Federal Deposit Insurance Corporation with respect to parent holding companies and affiliates of insured non-member banks, and to the Federal Home Loan Bank Board with respect to parent holding companies and affiliates of federally insured institutions.

Title II would allow national banks, federally-insured State-chartered banks, institutions insured under the National Housing Act, and small business investment companies to charge interest on business or agricultural loans of $25,000 or more at rates up to 5% above the Federal Reserve discount rate on 90-day commercial paper, notwithstanding any State constitution or law. The authority would be limited to loans made after the date of enactment but prior to July 1, 1977, or the date of any overriding State law, whichever is earlier.

Title III of the enrolled enactment would exempt borrowings and bank deposits over $100,000 of any Federal Reserve member bank or affiliate, FDIC insured non-member bank or affiliate, and member or non-member association, institution, or bank or affiliates thereof under the jurisdiction of the Federal Home Loan Bank Board from State usury laws until July 1, 1977, or the date of any overriding State law, whichever is earlier.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

Richard R. Albrecht
General Counsel

U.S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

OCT 21 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This is in response to your request of October 17, 1974, for the views of the Small Business Administration with respect to Title II of S. 3838, an enrolled bill "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Section 204 of S. 3838 would amend the Small Business Investment Company Act of 1958 to authorize SBICs to charge, on loans made by them, a rate of interest not more than five percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the district where the SBIC is located, where the maximum interest rate permitted by SBA is greater than the rate permitted under State usury laws. Section 204 also provides for penalties where SBICs charge a greater rate than that permitted by the bill.

This provision would benefit SBICs, and consequently the Nation's small businesses, by permitting SBICs to make loans where market conditions now require interest rates in excess of those permitted by State usury laws. This would make available much needed capital for the small business community, and accordingly SBA supports this provision.

We would, however, point out two concerns raised by section 204. First, our examiners and analysts will experience considerable difficulty in auditing the interest rates permitted by S. 3838, since the interest rate on loans in those States affected by this bill would be based on a rate which changes daily. Second, this provision keys long-term lending rates in a high-risk lending environment to short-term rates in an organized money market with low risk.

RECEIVED

OCT 22 1 00 AM 1974

OFFICE OF
MANAGEMENT & BUDGET

On balance, from our viewpoint as the bill affects SBA, we recommend that the President approve S. 3838. We defer to other departments and agencies more directly involved for comments on other provisions of S. 3838.

Thank you for the opportunity to comment on this enrolled bill.

Sincerely,

Thomas S. Kleppe

Thomas S. Kleppe
Administrator

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

OCT 21 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill (S. 3838) "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Title I of this bill gives the Federal Reserve Board discretionary authority to regulate interest rates on certain debt obligations issued by affiliates of banks which are members of the Federal Reserve System, primarily bank holding companies, regardless of the intended use of the proceeds of the debt issue. This title also grants corresponding discretionary regulatory authority to the Board of Directors of the Federal Deposit Insurance Corporation and to the Federal Home Loan Bank Board over certain obligations of affiliates of the financial institutions which they regulate. The provisions of this title are a response to recent debt offerings by bank holding companies, which, it is felt, are so attractive to small savers as to threaten disintermediation from savings institutions and the continued availability of mortgage money.

Titles II and III of this bill would permit national banks and other federally insured financial institutions to charge rates of interest on business and agricultural loans of $25,000 or more, notwithstanding any state constitution or statute, at a rate of not more than 5 percent in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District in which the institution is located. The purpose of these titles is to provide temporary relief to business and agricultural borrowers in certain states whose existing usury ceilings threaten to drastically reduce the availability of loans to such borrowers because of the high cost of lendable funds to financial institutions.

In general, the Department of Justice defers to those agencies more directly concerned with the subject matter of this bill as to whether it should receive Executive approval. However, we would note that the concern over disintermediation from savings institutions which prompted passage of the provisions of Title I of this bill appears to result largely from the fact that under the present system of interest rate regulation, savings institutions as well as other depository institutions are unable to adequately compete for funds in a climate of high interest rates. Thus, this legislation underlines the continuing need for comprehensive reform in the regulation of financial institutions.

Sincerely,

W V Rakestraw

W. Vincent Rakestraw
Assistant Attorney General

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CHAIRMAN

October 22, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Ash:

By enrolled bill request dated October 15, 1974, the Office of Management and Budget requested our views and recommendation on S. 3838, 93d Congress, an enrolled bill "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Title I of the bill authorizes the Federal Reserve, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board to regulate interest rates on certain debt obligations issued by affiliates of financial institutions. Title II would temporarily permit all insured State and federally chartered banks and savings and loan institutions to charge interest on commercial loans of $25,000 or more at a rate five percent above the Federal Reserve discount rate, notwithstanding any State usury limits otherwise applicable. Title III would temporarily preclude financial institutions and their affiliates from pleading usury in connection with certificates of deposit or other debt obligations issued by them.

The Corporation supports Title II of S. 3838 and interposes no objection to Titles I and III. Accordingly, we recommend that the President approve S. 3838.

Sincerely,

Frank Wille

Frank Wille
Chairman

OFFICE OF
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OCT 23 1974

BY SPECIAL MESSENGER

Honorable Wilfred H. Rommel
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Mrs. L. Garziglia
7201 New Executive Office Building

Re: Enrolled Bill S. 3838

Dear Mr. Rommel:

This will acknowledge receipt of the copy of the above enrolled bill together with your request for the Commission's views and comments on it.

The bill is designed to permit financial institutions to make certain types of loans at interest rates in excess of those presently permitted under the usury laws of some of the States until July 1, 1977 or until such earlier date as those States may adopt new usury laws applicable to such loans. The only portions of the bill which might otherwise have had some effect on one aspect of the federal securities laws have been hedged with specific provisions that they shall not have any such effect. Thus, the enrolled bill does not appear to affect the federal securities laws in any respect and the Commission, accordingly, takes no position as to whether the President should approve it.

Sincerely,

Ray Garrett Jr.

Ray Garrett, Jr.
Chairman

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 709

Date: October 24, 1974 Time: 12:30 p.m.

FOR ACTION: Geoff Shepard
Phil Buchen
Bill Timmons
✓Paul Theis

cc (for information) Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 9:00 a.m.

SUBJECT: Enrolled Bill S. 3838 - Debt obligations and usury ceilings

ACTION REQUESTED:

____ For Necessary Action

XX For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

Christine Wagner, RESEARCH

1974 OCT 24 PM 2 30

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM — WASHINGTON — LOG NO.: 709

Date: October 24, 1974 — Time: 12:30 p.m.

FOR ACTION: Tod Hullin ~~Geoff Shepard~~
Phil Buchen
✓Bill Timmons — must not be vetoed
✓Paul Theis — signing stmt attached for typing

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 — Time: 9:00 a.m.

SUBJECT: Enrolled Bill S. 3838 - Debt obligations and usury ceilings

ACTION REQUESTED:

___ For Necessary Action — XX For Your Recommendations

___ Prepare Agenda and Brief — ___ Draft Reply

___ For Your Comments — ___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

LOG NO.: 709

Date: October 24, 1974

Time: 12:30 p.m.

FOR ACTION: Geoff Shepard
Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 9:00 a.m.

SUBJECT: Enrolled Bill S. 3838 - Debt obligations and usury ceilings

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS

SUBJECT: Action Memorandum Log 709
Enrolled Bill S. 3838 - Debt Obligations and Usury Ceilings

Title I, the objectionable title in this bill, is discretionary and would not have to be exercised.

Title II is strongly supported by the delegations from Arkansas, Montana and Tennessee where State usury laws are having an impact on local economies during this period of high interest rates. As a result of the makeup of these delegations, which includes the Senate Majority Leader, the Senate Appropriations Committee Chairman, the Chairman of the House Ways and Means Committee and many strong Republican supporters of the Administration, I strongly recommend against using a veto for this legislation.

Must not be vetoed!

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 709

Date: October 24, 1974 Time: 12:30 p.m.

FOR ACTION: Geoff Shepard
Phil Buchen
Bill Timmons
Paul Theis

cc (for information) Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 9:00 a.m.

SUBJECT: Enrolled Bill S. 3838 - Debt obligations and usury ceilings

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

WASHINGTON

October 26, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS

SUBJECT: Action Memorandum - Log No. 709
Enrolled Bill S. 3838 - Debt Obligations and Usury Ceilings

These are supplemental views to my October 25th memorandum on same subject. My Title I comments deserve elaboration:

The arguments used by the Administration against this provision are basically the same used against Regulation Q. The Financial Institutions Act is now moving through Congress and would gradually phase out Regulation Q. At the same time, it would be contemplated that federal regulative authority over holding companies would be phased out. Title I is simply a measure to aid in the enforcement of Regulation Q and prevent discrimination.

This measure is extremely important to a number of Congressmen. If the President needs an additional report, Senator Bill Brock is the expert.

THE WHITE HOUSE

WASHINGTON

Date: 11-4-74

TO: Tom Jones

FROM: ~~Kathy~~ Tindle

For your information: ______________

Comments:

Please file.

Thanks.

THE WHITE HOUSE

WASHINGTON

From Shepard:

From Cavanaugh:

Re 3838 - The President's signing statement should say he hopes the Fed does not exercise the control title I gives them.

jlh

10/29
9:30 a.m.

return to
Warren Hendriks
JLA

Statement by the [illegible]

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE SENATE

I ~~am returning without my~~ Have approv~~al~~ed S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Title I of the bill would enable the Federal regulatory agencies to place interest rate ceilings on securities issued by types of institutions (principally holding companies) which at present are not subject to such regulations. Titles II and III would authorize exemptions from State usury laws of certain loans and borrowings.

While I would have no objection to Titles II and III of this bill, I believe that Title I of the bill constitutes a major step in the wrong direction -- a futile effort to keep interest rates at levels lower than those which borrowers are willing to pay in view of market conditions that are, of course, influenced by expected price trends.

There are several major deficiencies in Title I:

-- it would present an inequity by subjecting to regulation obligations with low denominations and early redemption features, while leaving unregulated some larger commercial obligations

-- it would discourage savings by small investors and force them to bear the costs both of subsidizing borrowers and protecting financial institutions from the defects in our financial system

-- it would constitute a sweeping regulatory approach to deal with the specific problems of disintermediation involving banks and thrift institutions

-- it would disrupt the normal financing operations of many smaller holding companies which rely upon issuing obligations

-- it would unfairly discriminate against bank and savings and loan holding companies vis-a-vis other corporations and public utilities which are competitive in many similar lines of activity and which are potential issuers of such obligations

-- it would severely undermine efforts toward freer financial markets by involving the Government deeply in capital control.

The Administration has been urging Congress to adopt the Financial Institutions Act (S. 2591), containing a set of reforms that would gradually free the credit market from harmful regulations of this sort. S. 3838, however, would move in precisely the opposite direction and represent highly objectionable legislation because it would perpetuate the need for ever-growing Government supervision, control, and enormous infusions of taxpayers' funds and other Government-assisted credit into the mortgage market during times of credit stringency. Such legislation does not serve the public interest.

THE WHITE HOUSE

October , 1974

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE SENATE

I am returning without my approval S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes."

Title I of the bill would enable the Federal regulatory agencies to place interest rate ceilings on securities issued by types of institutions (principally holding companies) which at present are not subject to such regulations. Titles II and III would authorize exemptions from State usury laws of certain loans and borrowings.

While I would have no objection to Titles II and III of this bill, I believe that Title I of the bill constitutes a major step in the wrong direction -- a futile effort to keep interest rates at levels lower than those which borrowers are willing to pay in view of market conditions that are, of course, influenced by expected price trends.

There are several major deficiencies in Title I:

-- it would present an inequity by subjecting to regulation obligations with low denominations and early redemption features, while leaving unregulated some larger commercial obligations

-- it would discourage savings by small investors and force them to bear the costs both of subsidizing borrowers and protecting financial institutions from the defects in our financial system

-- it would constitute a sweeping regulatory approach to deal with the specific problems of disintermediation involving banks and thrift institutions

-- it would disrupt the normal financing operations of many smaller holding companies which rely upon issuing obligations

-- it would unfairly discriminate against bank and savings and loan holding companies vis-a-vis other corporations and public utilities which are competitive in many similar lines of activity and which are potential issuers of such obligations

-- it would severely undermine efforts toward freer financial markets by involving the Government deeply in capital control.

The Administration has been urging Congress to adopt the Financial Institutions Act (S. 2591), containing a set of reforms that would gradually free the credit market from harmful regulations of this sort. S. 3838, however, would move in precisely the opposite direction and represent highly objectionable legislation because it would perpetuate the need for ever-growing Government supervision, control, and enormous infusions of taxpayers' funds and other Government-assisted credit into the mortgage market during times of credit stringency. Such legislation does not serve the public interest.

THE WHITE HOUSE

October , 1974

<u>Signing Statement on S. 3838</u>

I am signing into law today S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes".

Titles II and III of the bill would remove burdensome inequities by authorizing exemptions from state usury laws of large business and agricultural loans and of large borrowings of bank holding companies and bank deposits. Such usury laws as this bill addresses are well-meaning but futile attempts to keep interest rates at "reasonable" levels. In fact, their ~~but the~~ net effect is that the same borrowers who are supposedly protected from "unreasonable" interest rates are, instead, ~~not able~~ unable to obtain funds at the levels set by law.

S. 3838 seems to me a clearly second-best remedy to this problem, and the states which have these usury laws may wish to reconsider their applicability under today's conditions.

On the other hand, I am deeply concerned about Title I of the bill which enables the Federal financial regulatory agencies to place interest rate ceilings on securities issued by holding companies which at present are not subject to such regulations. I believe this provision goes in the same direction as the state usury laws from which the other titles of this bill authorize exemptions. I hope that the regulatory agencies will not see fit to exercise the authority granted by this provision.

The Administration has introduced a bill, the Financial Institutions Act (S. 2591), containing a set of reforms that would gradually free the credit market from harmful regulations of the sort imposed by Title I of S. 3838. I strongly urge the Congress to pass S. 2591.

Signing Statement on S. 3838

I am signing into law today S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes".

Titles II and III of the bill would remove burdensome inequities by authorizing exemptions from state usury laws of large business and agricultural loans and of large borrowings of bank holding companies and bank deposits. Such usury laws as this bill addresses are well-meaning but futile attempts to keep interest rates at "reasonable" levels~~, but the~~ In fact, their net effect is that the same borrowers who are supposedly protected from "unreasonable" interest rates are, instead, ~~not able~~ unable to obtain funds at the levels set by law.

S. 3838 seems to me a clearly second-best remedy to this problem, and the states which have these usury laws may wish to reconsider their applicability under today's conditions.

On the other hand, I am deeply concerned about Title I of the bill which enables the Federal financial regulatory agencies to place interest rate ceilings on securities issued by holding companies which at present are not subject to such regulations. I believe this provision goes in the same direction as the state usury laws from which the other titles of this bill authorize exemptions. I hope that the regulatory agencies will not see fit to exercise ~~the~~ discretionary authority granted by this provision.

The Administration has introduced a bill, the Financial Institutions Act (S. 2591), containing a set of reforms that would gradually free the credit market from harmful regulations of the sort imposed by Title I of S. 3838. I strongly urge the Congress to pass S. 2591.

Cleared by
Phil Areeda
per J E Thomas

AB

THE WHITE HOUSE

Don -

A cleaner copy of the signing statement for S 3838 - Everyone has signed off -

Jerry

Statement

Signing Statement on S. 3838

I am signing into law today S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes".

Titles II and III of the bill would remove burdensome inequities by authorizing exemptions from state usury laws of large business and agricultural loans and of large borrowings of bank holding companies and bank deposits. Such usury laws as this bill addresses are well meaning but futile attempts to keep interest rates at "reasonable" levels. In fact, their net effect is that the same borrowers who are supposedly protected from "unreasonable" interest rates are, instead, unable to obtain funds at the levels set by law.

S. 3838 seems to me a clearly second-best remedy to this problem, and the states which have these usury laws may wish to reconsider their applicability under today's conditions.

On the other hand, I am deeply concerned about Title I of the bill which enables the Federal financial regulatory agencies to place interest rate ceilings on securities issued by holding companies which at present are not subject to such regulations. I believe this provision goes in the same direction as the state usury laws from which the other titles of this bill authorize exemptions. I hope that the regulatory agencies will not see fit to exercise the discretionary authority granted by this provision.

The Administration has introduced a bill, the Financial Institutions Act (S.2591), containing a set of reforms that would gradually free the credit market from harmful regulations of the sort imposed by Title I of S. 3838. I strongly urge the Congress to pass S. 2591.

Gerald R. Ford

FOR IMMEDIATE RELEASE October 29, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am signing into law today S. 3838, "To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes".

Titles II and III of the bill would remove burdensome inequities by authorizing exemptions from state usury laws of large business and agricultural loans and of large borrowings of bank holding companies and bank deposits. Such usury laws as this bill addresses are well-meaning but futile attempts to keep interest rates at "reasonable" levels. In fact, their net effect is that the same borrowers who are supposedly protected from "unreasonable" interest rates are, instead, unable to obtain funds at the levels set by law.

S. 3838 seems to me a clearly second-best remedy to this problem, and the states which have these usury laws may wish to reconsider their applicability under today's conditions.

On the other hand, I am deeply concerned about Title I of the bill which enables the Federal financial regulatory agencies to place interest rate ceilings on securities issued by holding companies which at present are not subject to such regulations. I believe this provision goes in the same direction as the state usury laws from which the other titles of this bill authorize exemptions. I hope that the regulatory agencies will not see fit to exercise the discretionary authority granted by this provision.

The Administration has introduced a bill, the Financial Institutions Act (S. 2591), containing a set of reforms that would gradually free the credit market from harmful regulations of the sort imposed by Title I of S. 3838. I strongly urge the Congress to pass S. 2591.

# # # #

Calendar No. 1070

93D CONGRESS 2d Session | SENATE | REPORT No. 93-1120

FINANCIAL AMENDMENTS ACT OF 1974

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3838

TOGETHER WITH ADDITIONAL VIEWS

AUGUST 21, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
38-575 O WASHINGTON : 1974

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

JOHN SPARKMAN, Alabama, *Chairman*

WILLIAM PROXMIRE, Wisconsin	JOHN TOWER, Texas
HARRISON A. WILLIAMS, New Jersey	WALLACE F. BENNETT, Utah
THOMAS J. McINTYRE, New Hampshire	EDWARD W. BROOKE, Massachusetts
ALAN CRANSTON, California	BOB PACKWOOD, Oregon
ADLAI E. STEVENSON, III, Illinois	BILL BROCK, Tennessee
J. BENNETT JOHNSTON, JR., Louisiana	LOWELL P. WEICKER, JR., Connecticut
WILLIAM D. HATHAWAY, Maine	
JOSEPH R. BIDEN, JR., Delaware	

DUDLEY L. O'NEAL, Jr., *Staff Director and General Counsel*
WM. HOWARD BEASLEY III, *Director of Minority Staff*
WILLIAM R. WEBER, *Assistant Counsel*

Calendar No. 1070

93D CONGRESS, 2d Session } SENATE { REPORT No. 93-1120

FINANCIAL AMENDMENTS ACT OF 1974

AUGUST 21, 1974.—Ordered to be printed

Mr. McINTYRE, from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 3838]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (S. 3838) to authorize the regulation of obligations issued by financial institution holding companies, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

HISTORY OF THE LEGISLATION

On July 24 and 25, 1974, the Subcommittee on Financial Institutions held the third in a series of hearings on S. 2591, the Financial Institutions Act of 1973.

These hearings focused on the ability of financial institutions to attract and retain deposits in periods of high interest rates and strong competition for funds in the capital markets.

In this broader context, the Subcommittee examined the impact on disintermediation of the variable rate securities being issued by bank holding companies, such as Citicorp, which were specially designed to appeal to the individual saver and investor.

On July 11, 1974, S. Con. Res. 103 was introduced to clarify existing authority of the Federal Reserve Board under Section 19 of the Federal Reserve Act to regulate such debt obligations issued by bank holding companies.

Subsequently, on July 30, 1974, S. 3838 was introduced expressly to grant such authority not only to the Federal Reserve Board but to the Board of Directors of the Federal Deposit Insurance Corporation and to the Federal Home Loan Bank Board.

On August 8, 1974, the Full Committee ordered reported S. 1933, providing for bank underwriting of non-general obligation bonds of State and local governments, and S. 3817, providing for an increase in permissible interest rates charged on business loans by national banks and other federally insured financial institutions.

On August 12, 1974, the Full Committee, after deliberation, ordered reported S. 3838, as amended, and agreed by a majority to incorporate S. 1933 and S. 3817 as separate titles to the bill, S. 3838.

TITLE I—REGULATION OF INTEREST RATES ON CERTAIN DEBT OBLIGATIONS

Background of the Legislation

In June, 1974, Citicorp announced its intention to issue $250 million of variable rate securities. Citicorp is the parent holding company of First National City Bank, known as "Citibank," but according to the prospectus filed by Citicorp, none of the proceeds of Citicorp's note offering were intended for the use or benefit of Citibank.

The notes were for a term of 15 years, with interest to be paid semiannually. For the first 6 months after the date of issue, the notes paid interest at the rate of 9.7 percent. For the following 6-month period, the interest rate would be the higher of 9.7 percent or 1 percent above the average coupon equivalent of the latest weekly rate of 3-month U.S. Treasury bills, 21 days prior to the offering. For the remainder of the 15-year term, the interest rate would be adjusted for each payment date to "float" 1 percent above the Treasury bill rate, similarly measured.

In addition, the holders of the notes could redeem them in full on any interest date, upon 30 days notice. The notes were to be issued in $1,000 denominations, with a minimum required purchase of $5,000.

The "floating" interest rate, the possibility of semiannual redemption and the small minimum purchase requirement were all features admittedly designed specifically to appeal to the small saver and individual investor. They also made for a highly innovative financing instrument.

Investor response was so enthusiastic that the original Citicorp offering of $250 million was increased to $850 million. In addition, certain other bank holding companies announced their intention to offer similar issues, although for somewhat smaller amounts.

At the same time, there was substantial concern expressed in different quarters about the potential adverse effect these notes would have in terms of disintermediation from financial intermediaries, particularly thrift institutions, where savings inflows had already declined, thereby reducing the availability of funds for housing.

In addition, it was felt by some that notwithstanding the statement in the Citicorp prospectus that the proceeds of the bank holding company issue were intended *solely* for the benefit of *non-bank* subsidiaries, the Federal Reserve Board nevertheless had the authority, under Section 19 of the Federal Reserve Act, to regulate such issues in the manner prescribed for regulating bank deposits. According to this view, financial transactions engaged in by banks and their parent holding companies are often so closely intertwined that it is difficult for a regulatory body to determine whether the proceeds of any individual borrowing by a bank holding company confer an indirect benefit on the subsidiary bank. This difficulty is heightened when the assets of the subsidiary bank constitute a substantial percentage of the total assets of the holding company.

However, in response to a request from SEC Chairman Ray Garrett to the Federal Reserve Board for comment on the Citicorp prospectus, Governor George Mitchell, in a letter dated July 3, 1974, stated that "The Board's present statutory powers do not authorize it either to prevent or to regulate the terms of the Citicorp issue."

Governor Mitchell went on to express the concern that—

> . . . Given the present sensitive state of financial markets and the extent to which savings institutions are already under heavy pressure, however, the result of the present large offerings—and any other offerings like it, whether issued by bank holding companies or other corporations—can well be to divert the flow of savings from the residential mortgage market and to deprive homebuyers of needed mortgage financing. It is not clear, therefore, that an offering of this type is in the public interest at this time. . . .

Subsequently, at the strong urging of Federal Reserve Board Chairman Arthur Burns, Citicorp agreed to amend its offering to defer the initial redemption date for the notes until June 1, 1976. As a consequence, Citicorp's $850 million offering was reduced to $650 million, presumably reflecting diminished investor interest. Other bank holding note offerings have, in turn, been similarly modified.

Despite the effect of diminishing the notes' attractiveness by deferring their initial redemption date, substantial concern remained over the impact of further offerings of this type in terms of disintermediation from savings institutions and, correspondingly, on the continued availability of mortgage money.

At the same time, however, there was considerable sentiment expressed both at the Subcommittee's hearings and at the Full Committee markup, against discouraging innovation and competition with the financial industry.

On balance, it was the considered judgment of the Committee that the Federal Reserve Board should have the discretionary authority to regulate the Citicorp type of bank holding company notes, regardless of the use of the proceeds, taking into account the benefits which small savers could derive from such an innovative approach, and balancing them with the objective of promoting an adequate supply of mortgage money through financial intermediaries.

At the same time, the Committee recognized that the need for this legislation was prompted, in large part, by the particular inability of thrift institutions, as presently structured, to compete adequately for funds in a climate of high interest rates. While protection against disintermediation may be reasonable grounds at the moment for the grant of authority contained in this act, the Committee believes that such protection will likely be unnecessary if appropriate comprehensive financial reform legislation is enacted.

Explanation of the Legislation

Section 101 gives the Federal Reserve Board the discretionary authority under Section 19(j) of the Federal Reserve Act to regulate interest rates on certain debt obligations issued by affiliates of member banks, primarily bank holding companies, regardless of the intended use of the proceeds of the debt issue.

This discretionary regulatory authority extends to such debt obligations, generally, with the single exception of those exempted under section 3(a)(3) of the Securities Act of 1933 from SEC registration and prospectus requirements. This exception is for the purpose of precluding any regulatory authority by the Board over securities such as commercial paper issued by bank holding companies and their non-bank subsidiaries, characteristically offered and sold only to institutional investors in large denominations.

In the interest of granting maximum flexibility to the Board, the Committee was unwilling to provide for any additional statutory exceptions to the grant of discretionary authority contained in this Act. At the same time, it was clearly the Committee's intent that the exercise of any such authority by the Board be limited in scope.

For example, there was no intention on the part of the Committee that the Board exercise its authority to regulate borrowing by bank holding companies or their affiliates when such borrowing clearly has no relationship to the banking affiliate. Nor did the Committee intend the Board to regulate standard unrelated business obligations such as management contracts or accounts payable. The authority conferred to the Board by this act should be exercised only after giving careful consideration to the impact which the debt obligations of bank holding companies and bank affiliates might have on disintermediation from financial institutions and the concomitant impact on the availability of funds for housing.

In this regard, the Committee fully expects that the Board, in considering the exercise of this authority, will focus on those characteristics of such future debt obligations, in addition to their interest rates, which most closely resemble the characteristics of bank deposits and which, therefore, are most likely to determine their attractiveness to persons with funds invested in depository institutions. Such characteristics include the ease and frequency of redemption, the size of denomination and the minimum purchase amount required.

For this purpose, the Board may, in the exercise of its discretion, define such debt obligations as deposits, in which case the Board's authority to regulate such debt obligations is limited to its authority to set interest rate ceilings pursuant to section 19(j) of the Federal Reserve Act. The section 3(a)(3) exemption contained in this Act relates specifically to the increased authority of the Board under Section 19(j) to define such debt obligations as deposits as provided by this act.

Section 102 amends section 18(g) of the Federal Deposit Insurance Act to grant to the Board of Directors of the Federal Deposit Insurance Corporation discretionary regulatory authority corresponding to that of Section 101.

Section 103 amends section 5B(a) of the Federal Home Loan Bank Act to grant to the Federal Home Loan Bank Board discretionary regulatory authority corresponding to that of Section 101.

TITLE II—BANK UNDERWRITING OF NON-GENERAL OBLIGATION BONDS OF STATE AND LOCAL GOVERNMENTS

Purpose of the Legislation

The purpose of this bill is to assist cities and states to obtain financing at the lowest possible cost by permitting national banks and state banks which are members of the Federal Reserve System to underwrite and deal in revenue bonds. The proposed legislation would modernize and augment the powers of national banks to participate in public financing and would provide for local governments a more competitive market in which to raise funds for badly needed public improvements. With banks competing for the underwriting of revenue bonds, the Committee believes the cost of borrowing to state and local governments will be reduced.

Although this bill would permit banks to underwrite revenue bonds, similar authority would not be extended to special assessment obligations and industrial revenue bonds or to revenue bonds which are not eligible for purchase by a bank as an investment. Under current bank regulatory procedures, bank investment grade bonds must have a quality rating of B–aa or higher.

The bill would establish clear limitations to guard against potential conflicts of interest and unsound banking practices in connection with the underwriting of revenue bonds. Briefly, these limitations would insure that:

1. Banks could underwrite and deal only in revenue bonds eligible for purchase by national banks. This will prevent banks from dealing in risky or speculative issues:
2. A bank's investment in the revenue bonds of any one obligor would be limited to 10% of its capital and 10% of its surplus;
3. A bank acting as an underwriter or dealer could not sell revenue bonds to any of its trust accounts unless lawfully directed by court order;
4. No member of an underwriting syndicate could sell bonds to the trust department of any other bank which is a member of the syndicate until the syndicate has closed. This prohibition would prevent reciprocal dealing in an attempt to circumvent the self-dealing prohibitions on a member of an underwriting syndicate;
5. Sale of revenue bonds by a bank to its depositors, borrowers, or correspondent banks would be required to be accompanied by a statement disclosing that the bank is acting as an underwriter or dealer;
6. A bank could not transfer revenue bonds which it purchased as underwriter to its investment account during the underwriting period, with certain exceptions; and

7. The Secretary of the Treasury would be required to submit an annual report to the Congress showing the distribution of underwriting business in the revenue bond market between commercial banks and investment banking firms.

History of the Legislation

Prior to 1933, there was no clear line between investment banking and commercial banking. Numerous banks, engaged in the underwriting and distribution of securities during the 1920's, suffered severe financial difficulties when the stock market collapsed in 1929.

As a result, the Glass-Steagall Act of 1933 was designed to separate commercial banking from investment banking. Although commercial banks were prohibited from underwriting and dealing in "investment securities," an exception was made for U.S. Government bonds and general obligation bonds of State and local governments. This exception was designed to facilitate debt financing by Federal, State and local governments. Banks were not, however, authorized to underwrite nongeneral obligation bonds issued by states and municipalities. thus continuing a pattern established in the National Banking Act of 1927 (McFadden Act). In any event, nongeneral obligation or revenue bonds were not a common form of municipal finance at this time. It should be noted, however, that the Glass-Steagall Act did not preclude banks from buying revenue bonds for their own investment account and under the present regulations of the Comptroller many banks do so.

Since 1933, the authority of banks to underwrite Government bonds has been extended to include the bonds of the International Bank for Reconstruction and Development, the TVA, the Inter-American Development Bank, local public housing authorities, the Asian Development Bank, local public housing authorities, and bonds and participation certificates of the Federal National Mortgage Association. Thus, the Federal government over the past forty years has attempted to facilitate public financing by authorizing the use of the underwriting capabilities of commercial banks as well as securities firms.

Legislation to permit banks to underwrite State and local revenue bonds has been introduced in the House of Representatives since 1955, and the House Committee on Banking and Currency held hearings on such bills in 1963 and 1965. In 1967, Senator Proxmire introduced legislation (S. 1306) in the Senate substantially identical to the bill. This earlier legislation was approved by the then Committee on Banking and Currency of the Senate and passed by the full Senate. Unfortunately, no action was taken on the bill by the House Banking Committee, and the measure died. In 1968 the House of Representatives approved an amendment to the 1968 Housing Act authorizing commercial banks to underwrite and deal in investment quality housing, university, and dormitory revenue bonds. This amendment was accepted by the Senate and enacted into law on August 1, 1968.

This bill was introduced in the Senate on June 1, 1973 by Senator Proxmire as S. 1933, and referred to the Committee on Banking, Housing and Urban Affairs. Hearings were held before the Subcommittee on Securities on May 6, 7, and 8. The Subcommittee met on July 23 and reported the bill to the full Committee. The full Committee met on August 8 and agreed to report the bill, with an amendment, to the Senate.

Municipal Bond Market

Although revenue bonds were of little importance in 1933, they have become an important instrument of municipal finance. Because of limitations on bonded indebtedness and for other reasons, many cities and states are borrowing funds through the use of revenue bonds as opposed to general obligation bonds which are guaranteed by the full faith and credit of the State or local government. Furthermore, revenue bonds have gained public support by reason of placing the obligation to pay for a specific project on those directly benefiting from it.

The following table illustrates the trends in the municipal bond market. In 1940 only 12.6% of all new municipal bonds were in the revenue bond category. By 1973 the percentage had grown to 44.1%. In absolute terms revenue bonds amounted to $188 million in 1940, whereas by 1973 more than $10 billion in new revenue bonds were issued. In addition, the rapid growth in pollution control revenue bonds promises to inflate these figures by another one to two billion a year.

MUNICIPAL BOND ISSUES, SELECTED YEARS 1930–73

[Dollar amounts in millions]

Year	Total issues		General obligations		Revenue bonds	
	Amount	Percent	Amount	Percent	Amount	Percent
1930	$1,383	100	$1,383	100.0	(1)	(1)
1935	1,196	100	1,196	100.0	(1)	(1)
1940	1,498	100	1,310	87.4	188	12.6
1945	819	100	616	75.2	203	24.8
1950	3,694	100	3,094	83.8	600	16.2
1955	5,977	100	4,245	71.0	1,732	29.0
1960	7,230	100	5,035	69.6	2,195	30.4
1965	11,084	100	7,445	67.2	3,639	32.8
1970	17,761	100	11,803	66.4	5,958	33.6
1971	24,370	100	16,241	66.6	8,129	33.4
1972	22,941	100	14,121	61.6	8,820	38.4
1973	22,953	100	12,827	55.9	10,126	44.1

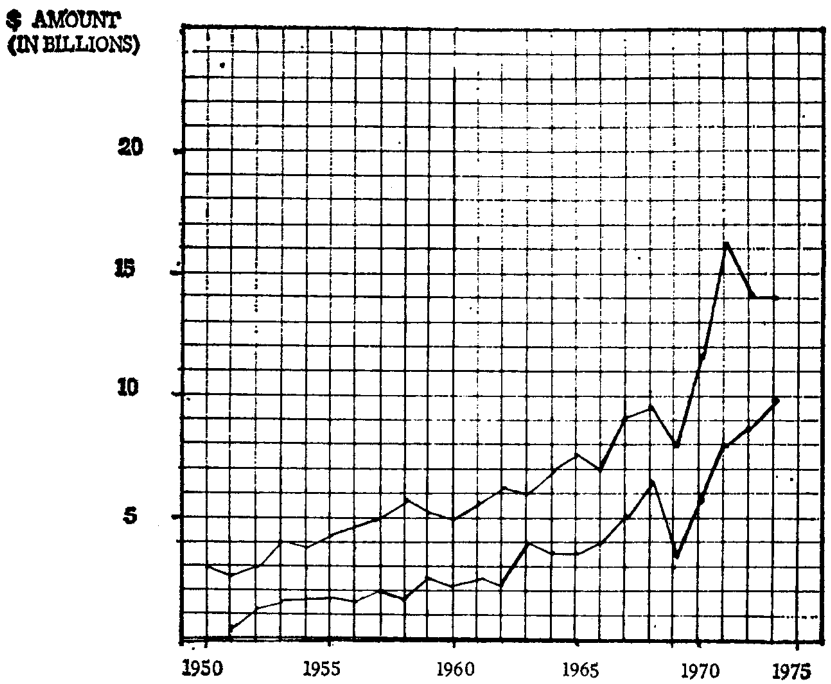
1 No record of revenue bonds. Amounts, if any, are presumed small.

Source: The Bond Buyer.

As the following graph indicates, municipalities are relying increasingly on revenue bond financing to support necessary public projects such as water and sewer facilities, hospitals, mass transit systems, and port facilities.

1950 -- 1973

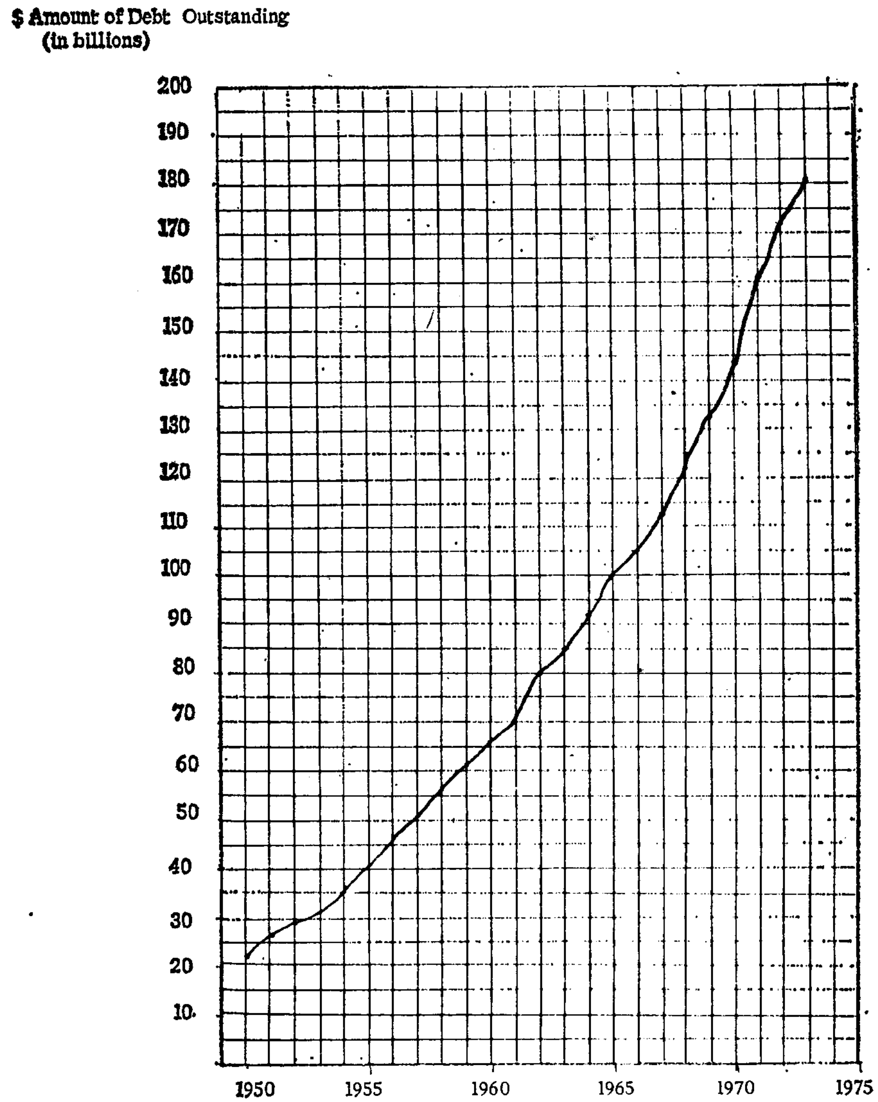
NEW ISSUES OF MUNICIPAL BONDS--GENERAL OBLIGATION AND REVENUE



Source--The Bond Buyer GENERAL OBLIGATION BONDS Upper Line REVENUE BONDS Lower Line

The projections of future municipal financial requirements indicate that state and local governments will continue to be heavy borrowers in the capital markets. State and municipal debt has increased rapidly since World War II. In 1946 State and local governments had about $13 billion of long-term debt outstanding, while today the figure is about $179 billion. In 1950 the amount of outstanding debt of states and municipalities was $22 billion; the amount doubled in 1956 to $44 billion; doubled again in 1964 to $90 billion; and doubled once again in 1973 to $180 billion. On the basis of these figures, Senator Proxmire has estimated that by 1983 the amount of municipal debt outstanding will be at $360 billion and by 1985, $750 billion. The following graph clearly illustrates the enormous growth in municipal debt over the past 25 years.

OUTSTANDING DEBT--STATES AND MUNICIPALITIES--1950 TO 1973



Source--The Bond Buyer

Revenue bonds were once regarded as a risky investment compared to general obligations bonds. However, in recent years the overall quality of revenue bonds appears to be approaching that of general obligation bonds. The Committee was informed by James E. Smith, Comptroller of the Currency "... that the default record for revenue bonds and the ratings they receive from bond rating services compare very favorably with general obligation bonds. In fact, some general obligation bonds are definitely riskier than many revenue bonds." The bill would restrict bank underwriting of revenue bonds to those of sufficient quality for inclusion in the bank's investment portfolio. This restruction would limit such underwriting at the present time to bonds of a B-aa or higher rating. Because of concern for the speculative character and riskiness of industrial revenue bonds and special assessment bonds, banks would be prohibited from underwriting these issues.

Need for Legislation

The principle argument in favor of this bill is that permitting banks to enter the revenue bond market will promote competition, increase the number of bids for such bonds, and thus lower the cost of borrowing to state and local governments. According to James E. Smith, Comptroller of the Currency, "The number of bidders is extremely important to a hard-pressed municipality since the figures show the interest paid is inversely related to the number of bidders. In otherwords, the greater the number of bidders the lower the rate of interest which the city will have to pay on its bonds."

This view was supported by the Federal Reserve Board and the Department of the Treasury in testimony before the Committee. Furthermore, the report of the President's Commission on Financial Structure and Regulation (the Hunt Commission) recommends that "commercial banks and their subsidiaries, in addition to the authority granted by the Housing Act of 1968 and existing authority to underwrite revenue bonds classified by the Comptroller of the Currency as general obligations, be permitted to underwrite revenue bonds secured by revenues from essential public services with (1) an established record of annual earnings sufficient to cover prospective annual principal and interest charges with a satisfactory margin, or (2) rated "A" or better by established rating services."

The Committee was presented with studies by Professor Reuben A. Kessel of the University of Chicago tending to support the conclusion that the number of bids for a bond issue and the cost of borrowing are inversely related. Dr. Kessel's conclusions were, however, disputed by Professor Simon Whitney, Visiting Professor of Economics of Iona College, who testified in opposition to the bill.

All studies presented to the Committee show that State and local governments pay a higher rate of interest on revenue bonds than they do on general obligation bonds. Most of these studies suggest that additional competition in the revenue bond underwriting market would result in at least a small but in no event inconsequential, savings in borrowing costs to municipal and State governments. Dr. Kessel's study demonstrates that at present, revenue bonds receive, on average, two fewer bids than general obligation bonds. If indeed bank entry increased the average number of bids on revenue bonds by two, it appears that underwriting costs (spread) might be reduced by 50 cents per $1,000 bond and reoffering yields by 5 to 10 basis points.

While these are not monumental figures for any one sale, the total amount would be substantial. For example, a ten-million dollar issue with a 10-year average-life could enjoy a reduction in the original cost of issue of $5,000 and a $5 to $10 thousand reduction in the annual interest payments over the life of the bond. These figures are simplifications, but if bank entry actually increased competition for the underwriting of revenue bonds, the aggregate savings to municipalities could be $50 to $100 million in interest costs over the life of all revenue bonds sold in a given year.

Dr. Reuben Kessel attempted to estimate the dollar savings to State and local governments from bank entry into the revenue bond market. Using the most conservative of the three alternatives he identified, Dr. Kessel estimated that the overall savings would be $5.60 per bond. By that calculation, the absence of bank competition in revenue bond financing over the past 7 years has cost state and local government an extra $280 million over the lives of the bonds underwritten during this period.

The results of Dr. Kessel's study and similar studies by the Comptroller and the Federal Reserve Board tend to show there would be small but measurable savings to State and local governments as a result of bank competition. In addition to this statistical evidence, the Committee believes it is reasonable to assume as a general rule that additional competition tends to reduce costs. Our antitrust laws and other policies promoting free and open competition are intended to produce the lowest possible price to the consumer. Although it is often difficult to measure precisely the effect of increased competition, in our free enterprise economy there must be a presumption that competition is to be preferred to the absence of competition. Thus, those who would restrict competition have the burden of demonstrating that competition will not in fact reduce costs or that the direct cost savings would be offset by socially undesirable externalities.

The Committee believes a reasonable case has been made that bank competition will lower interest charges to state and local governments. Although statistical data was presented by the Securities Industry Association which indicates that revenue bonds and general obligations receive almost an identical number of bids, no convincing evidence has been presented to show that bank competition would not lower the cost of borrowing to state and local governments. Further, the operation of banks in the general obligation market has not, to the Committee's knowledge, exposed bank depositors to serious risks or led to other abuses. There is no evidence to suggest that the experience with revenue bonds would be otherwise. In light of the available evidence, the Committee concluded that the existing prohibition against bank underwriting of revenue bonds could not be justified.

One natural consequence of permitting bank competition in underwriting revenue bonds would be a broadening of the distribution pattern. Commercial banks have many potential customers which are not reached by securities firms. The addition of these new potential customers should increase the overall demand for revenue bonds, thus resulting in a lower rate of interest. The argument has also been made that banks could help stabilize the revenue bond market in times of tight money. The banks, according to this argument, have demonstrated their willingness and ability to commit capital to the general obligation market under adverse credit conditions, even to the extent of lending to communities at below market rates. It is to be hoped that this commitment will carry over to the revenue bond market.

Also, the very fact that commercial banks are prohibited from underwriting municipal revenue bonds casts some stigma on these bonds in the eyes of the investing public. By permitting banks to underwrite revenue bonds, any possible stigma associated with such bonds should be removed, leading to greater investor acceptance and a consequent reduction in the interest charged to the issuer.

Another advantage of permitting banks to underwrite and deal in revenue bonds would be to strengthen the secondary market for revenue bonds. To the extent additional dealers are prepared to make a strong secondary market, the liquidity of outstanding revenue bonds is enhanced. With increased liquidity, investors should be willing to accept a lower rate of return on the initial reoffering, thereby reducing the net interest cost of State and local governments.

The Committee is mindful of the conflict-of-interest arguments raised by those who have opposed this legislation. One possible conflict of interest lies in the role of a bank as an underwriter and in its role as investment adviser to its correspondent banks. The argument has been made that an underwriting bank, in order to rid itself of a slow issue, might pressure its correspondent banks to purchase such issues on unfavorable terms. A second problem is that a bank might buy and sell bonds for its trust accounts in an attempt to manipulate the price of the bonds in order to avoid a loss in its investment account.

The Committee is convinced that any conflict-of-interest problems associated with this legislation can be corrected by the express limitations in the bill and vigorous regulatory oversight. Banks have been underwriting general obligation bonds for the last 34 years without apparent abuses. In testifying before the Committee, James Smith stated: ". . . the experience of my office in regard to national banks which underwrite other government obligations is that conflict-of-interest does not seem to be a problem. I do not think the underwriting of revenue bonds will create a sudden dilemma in this respect." Similar judgments were expressed by the Federal Reserve Board, the General Counsel of the Treasury, and the President's Commission on Financial Structure and Regulation (the Hunt Commission). Moreover, none of the opponents of the bill could provide the Committee with documented evidence that banks have, in fact, abused their authority to underwrite general obligation bonds.

PROTECTIVE MEASURES

In view of the experience with general obligation bonds, the Committee believes that banks can safely be extended authority to underwrite revenue bonds. Nevertheless, the authority to underwrite revenue bonds should not be considered an inherent right of commercial banks, but rather a privilege which can be revoked if evidence of abuse develops. In this connection, the Committee expects the bank supervisory agencies to play an important role in monitoring this legislation. The Committee expects the bank supervisory agencies to be diligent in scrutinizing purchases of revenue bonds by correspondent banks from

underwriting banks, to insure that such purchases are not being made upon terms unfavorable to the correspondent bank. The Committee also expects the supervisory agencies to examine closely the activities of the trust accounts of commercial banks to insure that such accounts are not used to influence the price of revenue bonds in order to further the banks' underwriting or investment activities.

To guard against potential problems, the bill would require the Secretary of the Treasury to submit an annual report to the Congress showing the distribution of underwriting business in the revenue bond market between commercial banks and investment banking firms. Professor Simon Whitney, testifying in behalf of the Securities Industry Association, argued that commercial banks could force smaller investment banking firms out of business, thereby resulting in a reduction in competition. Although the Committee believes that the rapidly expanding market for state and local bonds will provide sufficient opportunity for both commercial banks and investment banks to engage in the underwriting business, the Committee is confident that the Secretary's annual report will provide the Congress with sufficient information to monitor developments in this area.

To prevent self-dealing between an underwriting bank and its own investment account, the bill would prohibit a member bank from transferring revenue bonds which is purchased as an underwriter to its investment account during the underwriting period. In addition, a bank acting as underwriter or dealer would not be permitted to sell revenue bonds to any of its trust account unless lawfully directed by court order. It is expected that bonds purchased by a bank as an underwriter will be made the subject of a genuine public offering. Furthermore, if a bank sells revenue bonds to its depositors, customers, or correspondent banks, the transaction must be accompanied by a statement disclosing the fact that the bank is acting as an underwriter or dealer.

Although the Hunt Commission recommended that bank underwriting privileges be limited to revenue bonds rated "A" or better, the Committee, after careful consideration of this recommendation, could find no reason to prohibit banks from underwriting revenue bonds which they are permitted to purchase for their investment portfolio. Under present procedures, the Comptroller of the Currency determines the quality of municipal bonds in which banks are permitted to invest. Under the bill, the Comptroller's determinations as to appropriate investment quality would control the revenue bonds eligible for bank underwriting.

COMMITTEE AMENDMENTS

In reporting the bill, the Committee recommends an amendment which is designed to give the securities industry a reasonable period of time to adjust to the entry of commercial banks into the business of underwriting nongeneral obligations of state and local governments. As so amended, the bill would delay the authorization of commercial banks to engage in the underwriting of revenue bonds for 18 months. During this period, the Committee expects both the securities and banking industries to prepare for the new and more competitive underwriting environment.

The Committee has favorably reported on S. 2474 which would establish a Municipal Securities Rulemaking Board with responsibility for promulgating rules governing the activities of both banks and securities firms dealing in municipal securities. During the 18-month grace period before banks would be permitted to enter the revenue bond business, the Committee expects the new Board to analyze the regulatory needs with respect to revenue bonds, and particularly the need for the affirmative prohibitions continued in this Title. If the Board determines that these provisions constitute unnecessary regulatory restrictions, the Committee assumes that the Board will make appropriate recommendations to the Congress. If the restrictions in this Title are desirable, the Committee, of course, assumes they will then be extended to bank dealing in general obligation bonds.

TITLE III—INTEREST RATE AMENDMENTS REGARDING STATE USURY CEILINGS ON BUSINESS LOANS

Purpose of the Legislation

This Title would amend the National Banking Act, the Federal Deposit Insurance Act and the National Housing Act to permit national banks, and Federally-insured savings and loan associations and savings banks to charge interest on business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, at a rate of not more than 5 percent in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located. The amendments under this Title shall not apply to any loan made after July 1, 1977, the cut-off date for this legislation, or after the effective date of any law enacted by a state which prohibits the charging of interest at the rates provided in the amendments made by this Title. Home mortgage, consumer and other interest rate ceilings established by any state would not be disturbed. This Title will have a significant effect in only three states each having a 10 percent ceiling on business loans—Arkansas and Tennessee by state constitution and Montana by statute. For the most part, all other states exempt business loans from usury ceilings or have ceilings at a level which do not create a problem under current conditions.

The basic problem is that in Tennessee, Arkansas and Montana, the financial industry has been caught in a pinch because of the high price it must pay for money as opposed to the interest it can earn. In Tennessee and Arkansas by constitution and in Montana by statute, the maximum interest which may be charged business borrowers is 10 percent whereas the financial institutions must pay up to 13 percent for money bought through the Federal Reserve System in the so-called Federal funds market. Most other states exempt business borrowing from the usury statutes. Although many of the financial institutions in these states have continued to make business loans in anticipation that rates will go down or that the state would take necessary action, they will not be able to continue this practice over a period of time and remain solvent. Hardest hit will be the construction, agricultural and small business firms who can not channel funds into the states through outside corporate subsidiaries.

To give the state legislatures and constitutional conventions sufficient time to act and to avoid unemployment and severe economic repercussions during the interim, Senator Brock on his behalf and the behalf of the Senators from the affected states (Senators Baker, Mansfield, and Fulbright) introduced S. 3817 which will allow national banks and Federally-insured financial institutions to charge on corporate loans interest at a rate of 5 percent in excess of the Federal discount rate which is now about 8 percent, regardless of state usury laws. The bill has a duration of three years and will not affect consumer or home mortgage loans.

Hearings were held on S. 3817 on July 31, 1974, before the Subcommittee on Financial Institutions and all of the Federal financial regulatory agencies (the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation) supported the legislation. The Governor of Tennessee at well as the Tennessee State Banking Commissioner supported S. 3817. Both lenders and business borrowers from the respective states urged passage of the bill. The only opposition came from the Conference of State Bank Supervisors, which took the position that the legislation is an encroachment on the states' prerogative of setting usury rates.

The primary question which this legislation raises is whether the situation is sufficiently acute to justify Federal action at this time. Witnesses before the Subcommittee testified that, although banks and other financial institutions in these states (Tennessee, Arkansas, and Montana) have endeavored to the best of their ability to continue to serve commercial borrowers, it is unrealistic to assume that that can be done for any considerable period of time, both from the standpoint of the marginal costs of money which these institutions are having to pay to acquire funds and also in terms of opportunity costs for the application of their funds to alternative sources. For example, tax exempt municipals yield 7.70% and the Federal funds yield ranges from 11.5% to 14%.

Testimony received from the representatives of the Tennessee Bankers Association indicated that current loan policy by Tennessee bankers is restrictive in not making loans to new customers and reducing loans to present customers. The situation will become more severe in the fall with the heavy loan demands for the agricultural crop. It is estimated that $75 million of commercial construction projects could not be completed because funds have left the state since the first of the year. It is further estimated that there has been a loss of at least $200 million of capital investment due to the 10% usury law. The majority of these losses were by relatively small firms that do not have access to national money markets. This can be translated into a loss of about 14,000 jobs.

In Arkansas, Montana and West Tennessee it is anticipated that severe problems will be faced in meeting the need for agricultural lending. A witness from Arkansas testified that it is essential that the situation be corrected before the next agricultural crop is planted in the spring. This bill is designed to meet this emergency.

Although the Committee concluded that evidence before it justified Federal action of an emergency nature as envisioned here, it is concerned that this action not be construed as reflecting a Federal policy of overriding state law in this area, especially with respect to consumer and home mortgage loans. The Committee notes that the authors have characterized this as emergency legislation with a termination date of July 1, 1977. To reflect further a congressional policy of permitting a state the primary opportunity to determine its usury statutes, the Committee has amended the bill to allow a state, after

passage of this Act, to override this Federal legislation by taking appropriate action at the state level to reassert or restate any state usury provision that might have been altered or affected by passage of this Title.

Testimony before the Subcommittee indicated that the cash customer could also benefit in the affected states from an increase in the interest rate structure. Dr. John Dominick of the University of Arkansas told the Subcommittee that prices of consumer durables in that state with its low usury rates are considerably higher than in surrounding states. Dr. Dominick interprets this as meaning that cash buyers are subsidizing the credit customers.

An important question concerns the effect that this bill might have on small business firms. As originally drafted, it was applicable only to corporate borrowers. There was a broad consensus among the witnesses that the benefits of the legislation should be extended to the unincorporated business firm. Savings and loan representatives pointed out that many construction loans are made to unincorporated borrowers. In addition, many unincorporated small business firms are competing with large national corporations which can go outside of the state for financing. So that small business and agricultural firms can fully enjoy the benefits, this legislation was amended by the Committee to extend to business and agricultural loans of $25,000 or more. Although it might be argued that small business firms are not able to pay in excess of 10% interest, the alternative which they face in the absence of this legislation is the inavailability of funds altogether. One small business witness who appeared before the Committee testified that he simply could not operate in competition with the large firms unless he was able to compete on an equal basis in bidding for credit.

In sum, the evidence before the Committee indicates that loans in the affected states are becoming unavailable, liquidity of financial institutions is adversely affected, small borrowers are disadvantaged with competing with national corporations and there is an outflow of funds from the states. Unless remedial action is taken in the very near future, these states could suffer from unemployment and business failures. Since it will take a considerable length of time to amend the constitution in at least one of the states to provide a complete remedy, the Committee has acted favorably upon this Title to meet the emergency by providing an interim solution.

Section-by-Section Analysis

Sec. 301 would amend the National Banking Act (12 U.S.C. 85) to permit National Banks, regardless of State law, to charge interest on business or agricultural loans in the amount of $25,000 or more, at a rate of 5 percent in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located.

Sec. 302 would amend the Federal Deposit Insurance Act (12 U.S.C. 1811–31) to permit State-charted Federally-insured banks, including Mutual Savings Banks, regardless of State law, to charge interest on business or agricultural loans, in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located.

Sec. 303 would amend the National Housing Act (12 U.S.C. 1724–1730(d)) to permit Federally-insured savings and loan associations, regardless of State law, to charge interest on business or agricultural loans, in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located.

Sec. 304 provides that if any provision of the Title shall be held invalid, such action shall not affect the validity of the other provisions.

Sec. 305 provides that the amendments in the Title shall not be effective after July 1, 1977, or in any state shall not be effective after the effective date of any law subsequently enacted by that state which prohibits the charging of interest at the rates provided in the amendments.

CORDON RULE

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

ADDITIONAL VIEWS OF MESSRS. TOWER, BENNETT, AND WEICKER

In our opinion, the legislation adopted by the Committee in Title I, to regulate the debt obligations of bank holding companies, is certainly premature and may well be unnecessary. It represents an overreaction to the concern that the amount of small-denomination, variable-rate notes, such as those issued by Citicorp, could total as much as $15 billion, with most of this coming out of savings deposits at thrift institutions.

The truth of the matter is, however, that the amount of notes being offered to the public by bank holding companies has fallen far short of earlier emotion-laden projections. Investor interest in these offerings has lagged in recent weeks, as indicated in the following article from the August 21, 1974 issue of The Wall Street Journal, and the amount of such offerings may now total only $1½ to $2 billion.

[From the Wall Street Journal, Aug. 21, 1974.]

SAVINGS BANK CUTS FLOATING-RATE NOTE ISSUE TO $40 MILLION

The wobbly fortunes of floating-rate note issuers were underscored anew yesterday when the lack of investor demand forced one issuer to cut the size of its offering, another to announce an interest rate boost on a sale planned for tomorrow and a dramatic price break in an issue offered earlier this month.

New York Bank for Savings, the nation's fourth-largest mutual thrift-organization, became the first savings bank to market floating-rate notes yesterday when it sold $40 million of seven-year notes, $10 million less than originally planned. The notes were offered at a price of 100 with 10% interest through May 31, 1975, and from June 1, 1975, through Feb. 29, 1976, the interest will be 10% or 1¼ percentage points above the interest-yield equivalent of an average three-month Treasury bill, whichever is higher. The notes provide an 8% interest floor, but aren't redeemable before maturity. The notes issued recently by bank holding companies are repayable by the issuer at their face amount after two years but don't carry a minimum interest guarantee.

Underwriters managed by Morgan Stanley & Co. marketed the offering.

Mellon National Corp. said it increased to 10%, from 9.7%, the interest rate initially payable on its $100 million of floating-rate notes, due 1989, scheduled for sale tomorrow.

> Chase Manhattan Corp.'s 9.7% floating-rate notes, which were offered at a price of $100 in a $200 million sale Aug. 2, plunged $2.375 for every $100 face amount after syndicate price restrictions were removed yesterday. The notes closed at 97⅝, after trading as low as 97¼.

Accordingly, the adverse impact which debt obligations issued by bank holding companies may have on the inflow of funds to thrift institutions and housing appears to have been overstated. Furthermore, we believe that market forces will continue to limit the extent of investor demand for these same type of issues in the future, and the discipline of the marketplace will also limit the number and amount of such offerings being made to the public.

In summary, the broad grant of authority to the Federal Reserve under Title I of this bill is unwarranted at this time. It treats symptoms rather than causes, and represents a piecemeal approach to solving problems that have predictably emerged in the financial sector. This type of action will only need to be undone at a later date if a meaningful reform of the financial structure is to be undertaken. Any supposed benefit is now outweighed by the adverse consequences which it holds for small savers and the need to encourage innovative methods of financing.

JOHN TOWER.
WALLACE F. BENNETT.
LOWELL P. WEICKER, Jr.

○

93D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-1440

DEBT OBLIGATIONS AND USURY CEILING

OCTOBER 8, 1974.—Ordered to be printed

Mr. PATMAN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 3838]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3838) to authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—REGULATION OF INTEREST RATES ON CERTAIN OBLIGATIONS

SEC. 101. Section 19(a) of the Federal Reserve Act (12 U.S.C. 461) is amended by inserting "and, regardless of the use of the proceeds," immediately before "shall be deemed a deposit".

(b) The amendment made by subsection (a) shall not apply to any bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

SEC. 102. (a) The sixth sentence of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by striking out "for the purpose of obtaining funds to be used in the banking business".

(b) The amendment made by subsection (a) shall not apply to any bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of

the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

SEC. 103. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended as follows:

(1) by adding at the end of subsection (a) thereof the following new sentences: "The provisions of this subsection shall apply, in the discretion of the Board, to an obligation issued by an affiliate of an institution which is an insured institution as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a). The Board is authorized to define by regulation the terms used in this section, except that the Board may not, under the additional authority conferred by this sentence and the preceding sentence, define as a deposit any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.";

(2) by striking out "institution subject to this section" in subsection (b) thereof and inserting in lieu thereof "person or organization"; and

(3) by striking out "nonmember institution" and "institution" in subsection (c) thereof and inserting in lieu thereof "person or organization" in both places.

TITLE II—INTEREST RATE AMENDMENTS REGARDING STATE USURY CEILINGS ON BUSINESS LOANS

SEC. 201. Section 5197 of the Revised Statutes, as amended (12 U.S.C. 85), is amended by inserting in the first and second sentences before the phrase "whichever may be the greater", the following: "or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located,".

SEC. 202. The Federal Deposit Insurance Act (12 U.S.C. 1811–31) is amended by adding at the end thereof the following:

"SEC. 24. (a) In order to prevent discrimination against State-chartered insured banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank would be permitted to charge in the absence of this subsection, a State bank may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill or exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

"(b) if the rate prescribed in subsection (a) exceeds the rate such State bank would be permitted to charge in the absence of this paragraph, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the State bank taking or receiving such interest.".

SEC. 203. Title IV of the National Housing Act (12 U.S.C. 1724–1730(d)) is amended by adding at the end thereof the following:

"SEC. 412. (a) If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

"(b) If the rate prescribed in subsection (a) exceeds the rate such institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the institution taking or receiving such interest.".

SEC. 204. Section 308 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661), is amended by adding at the end thereof the following:

"(h)(1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act, if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

"(2) *If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the small business investment company taking or receiving such interest.*"

SEC. 205. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby.

SEC. 206. The amendments made by this title shall apply to any loan made in any State after the date of enactment of this title, but prior to the earlier of July 1, 1977, or the date (after the date of enactment of this title) on which the State enacts a provision of law which prohibits the charging of interest at the rates provided in the amendments made by this title.

TITLE III—APPLICABILITY OF STATE USURY CEILINGS TO CERTAIN OBLIGATIONS ISSUED BY BANKS AND AFFILIATES

SEC. 301. Section 19 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(k) *No member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate may plead, raise, or claim, directly or by counter claim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member bank or affiliate or to any other person.*"

SEC. 302. Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

"(k) *No insured nonmember bank or affiliate thereof, or any successor or assignee of such bank or affiliate or any endorser, guarantor, or surety of such bank or affiliate may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such bank or affiliate or to any other person.*"

SEC. 303. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended by adding at the end thereof the following new subsection:

"(e) *No member or nonmember association, institution, or bank or affiliate thereof, or any successor or assignee, or any endorser, guarantor, or surety thereof may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member or nonmember association, institution, bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member or nonmember association, institution, bank, or affiliate or to any other person.*"

SEC. 304. The amendments made by this title shall apply to any deposit made or obligation issued in any State after the date of enactment of this title, but prior to the earlier of (1) July 1, 1977 or (2) the date (after such date of enactment) on which the State enacts a provision of law which limits the amount of interest which may be charged in connection with deposits or obligations referred to in the amendments made by this title.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

W. A. BARRETT,
THOMAS L. ASHLEY,
WILLIAM S. MOORHEAD,
FERNAND J. ST GERMAIN,
FRANK ANNUNZIO,
JIM HANLEY,
WILLIAM R. COTTER,
JOHN J. MOAKLEY,
WILLIAM B. WIDNALL,
ALBERT W. JOHNSON,
CHALMERS P. WYLIE,
JOHN H. ROUSSELOT,
ANGELO D. RONCALLO,
MATTHEW J. RINALDO,
Managers on the Part of the House.

JOHN SPARKMAN,
WILLIAM PROXMIRE,
HARRISON A. WILLIAMS,
THOMAS J. MCINTYRE,
WALLACE BENNETT,
JOHN TOWER,
BILL BROCK,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3838) to authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill amended Section 19(a) of the Federal Reserve Act to authorize the Federal Reserve Board to regulate debt obligations of a parent holding company or an affiliate of a member bank, regardless of the use of the proceeds within the holding company.

The House bill granted similar authority to the Board of Directors of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board with respect to institutions under their respective jurisdictions.

The House bill exempted from its provisions any bank holding company which has filed prior to the date of enactment an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all its banks under Section 4 of the Bank Holding Company Act.

The Senate bill amended Section 19(j) of the Federal Reserve Act to give the Federal Reserve Board the discretionary authority to regulate interest rates on certain debt obligations issued by parent holding companies and affiliates of member banks regardless of the intended use of the proceeds of the debt issue.

The Senate bill provided similar discretionary regulatory authority to the Board of Directors of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board with respect to institutions under their respective jurisdictions.

Under the Senate bill, the grant of discretionary regulatory authority did not extend to those debt obligations exempted under Section 3(a)(3) of the Securities Act of 1933 from SEC registration and prospectus requirements.

The Senate receded and concurred in the House bill with the following amendment:

> Section 19(a) of the Federal Reserve Act is amended to authorize the Federal Reserve Board to regulate debt obligations of a parent holding company or an affiliate of a member bank, regardless of the use of the proceeds within the holding company. The conferees also adopted the House provision which exempted from this authority any bank holding company which has filed prior to the date of enactment an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all its banks under section 4 of the Bank Holding Company Act.
>
> Similar authority is granted under the compromise to the Board of Directors of the Federal Deposit Insurance Corporation with respect to parent holding companies and affiliates of insured non-member banks.

The Senate conferees also receded to the House position on the Federal Home Loan Bank Board authority with an amendment which limits this authority to parent holding companies and affiliates of federally insured institutions.

The granting of discretionary regulatory authority to each of the regulatory agencies shall not extend to those debt obligations exempted under section 3(a)(3) of the Securities Act of 1933 from SEC registration and prospectus requirements. This provision is intended to carve out an exemption for securities such as commercial paper issued by holding companies and their nonbank subsidiaries characteristically sold only to institutional investors in large denominations.

The Senate bill provided for National banks and State banks, which are members of the Federal Reserve System, to underwrite and deal in nongeneral obligation bonds of State and local governments with certain limitations. The Secretary of the Treasury would be required to submit an annual report to Congress showing the distribution of underwriting business in the revenue bond market between commercial banks and investment firms. The House bill contained no comparable provision. The Senate receded to the House.

The Senate bill allowed National banks to charge interest on business or agricultural loans in the amount of $25,000 or more at a rate not in excess of 5% more than the Federal Reserve discount rate on 90-day commercial paper, notwithstanding any State Constitution or statute. The Senate bill permitted similar exemptions from State interest rate ceilings for Federally-insured State-chartered banks, institutions insured under the National Housing Act, and small business investment companies. The Senate bill limited the applicability of its provisions to loans made after the date of enactment but prior to July 1, 1977, or to the date of any overriding State law, whichever is earlier. The House bill contained no comparable provision. The House receded to the Senate.

The Conference Committee questioned whether this provision would have any effect on existing loans in the affected States. They agreed there is no intention by this legislation to disturb existing loans or contractural relationships between the parties. The bill simply permits the financial institutions, after the date of enactment of the legislation,

to charge interest on certain business and agricultural loans at a rate up to 5 percent above the Federal discount rate, regardless of State law. This is fortified by the specific language stating that "amendments made by this title shall apply to any loan made in any State after the date of enactment of this title." Thus, existing State law would continue to apply where a loan has been made prior to the date of enactment. Loans with rates of interest made prior to the date of enactment of the title, for example, would not be affected by the legislation.

The Senate bill contained a provision allowing the proceeds of abandoned money orders for travelers checks to escheat to the State in which they were purchased, or, if the State of purchase is unknown, such proceeds would accrue to the State in which the issuing organization has its principal place of business. The House bill had no comparable provision. Since this provision had been incorporated into separate legislation, the Senate receded to the House.

The Senate bill exempted borrowings and bank deposits over $100,000 of any Federal Reserve member bank or affiliate, FDIC insured nonmember bank or affiliate, and member or non-member association, institution, or bank or affiliates thereof under the jurisdiction of the Federal Home Loan Bank Board from State usury law until July 1, 1977, or the date of any overriding State law, whichever is earlier. Federal Home Loan Bank Board from State usury law until July 1, to the Senate.

W. A. Barrett,
Thomas Ashley,
William S. Moorhead,
Fernand J. St Germain,
Frank Annunzio,
Jim Hanley,
William R. Cotter,
John J. Moakley,
William B. Widnall,
Albert W. Johnson,
Chalmers P. Wylie,
John H. Rousselot,
Angelo D. Roncallo,
Matthew J. Rinaldo,
Managers on the Part of the House.
John Sparkman,
William Proxmire,
Harrison A. Williams,
Thomas J. McIntyre,
Wallace Bennett,
John Tower,
Bill Brock,
Managers on the Part of the Senate.

S. 3838

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—REGULATION OF INTEREST RATES ON CERTAIN OBLIGATIONS

SEC. 101. Section 19(a) of the Federal Reserve Act (12 U.S.C. 461) is amended by inserting "and, regardless of the use of the proceeds," immediately before "shall be deemed a deposit".

(b) The amendment made by subsection (a) shall not apply to any bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

SEC. 102. (a) The sixth sentence of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by striking out "for the purpose of obtaining funds to be used in the banking business".

~~(b) The amendment made by subsection (a) shall not apply to any~~ bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

SEC. 103. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended as follows:

(1) by adding at the end of subsection (a) thereof the following new sentences: "The provisions of this subsection shall apply, in the discretion of the Board, to an obligation issued by an affiliate of an institution which is an insured institution as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a)). The Board is authorized to define by regulation the terms used in this section, except that the Board may not, under the additional authority conferred by this sentence and the preceding sentence, define as a deposit any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.";

(2) by striking out "institution subject to this section" in subsection (b) thereof and inserting in lieu thereof "person or organization"; and

(3) by striking out "nonmember institution" and "institution" in subsection (c) thereof and inserting in lieu thereof "person or organization" in both places.

TITLE II—INTEREST RATE AMENDMENTS REGARDING STATE USURY CEILINGS ON BUSINESS LOANS

SEC. 201. Section 5197 of the Revised Statutes, as amended (12 U.S.C. 85), is amended by inserting in the first and second sentences before the phrase "whichever may be the greater", the following: "or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located,".

SEC. 202. The Federal Deposit Insurance Act (12 U.S.C. 1811–31) is amended by adding at the end thereof the following:

"SEC. 24. (a) In order to prevent discrimination against State-chartered insured banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank would be permitted to charge in the absence of this subsection, a State bank may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill or exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

"(b) If the rate prescribed in subsection (a) exceeds the rate such State bank would be permitted to charge in the absence of this paragraph, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the State bank taking or receiving such interest.".

SEC. 203. Title IV of the National Housing Act (12 U.S.C. 1724–1730(d)) is amended by adding at the end thereof the following:

"SEC. 412. (a) If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

"(b) If the rate prescribed in subsection (a) exceeds the rate such institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the institution taking or receiving such interest.".

Sec. 204. Section 308 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661), is amended by adding at the end thereof the following:

"(h)(1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act, if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

"(2) If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the small business investment company taking or receiving such interest."

Sec. 205. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby.

Sec. 206. The amendments made by this title shall apply to any loan made in any State after the date of enactment of this title, but prior to the earlier of July 1, 1977, or the date (after the date of enactment of this title) on which the State enacts a provision of law which prohibits the charging of interest at the rates provided in the amendments made by this title.

TITLE III—APPLICABILITY OF STATE USURY CEILINGS TO CERTAIN OBLIGATIONS ISSUED BY BANKS AND AFFILIATES

Sec. 301. Section 19 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(k) No member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate may plead, raise, or claim directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member bank or affiliate or to any other person."

SEC. 302. Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

"(k) No insured nonmember bank or affiliate thereof, or any successor or assignee of such bank or affiliate or any endorser, guarantor, or surety of such bank or affiliate may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such bank or affiliate or to any other person."

SEC. 303. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended by adding at the end thereof the following new subsection:

"(e) No member or nonmember association, institution, or bank or affiliate thereof, or any successor or assignee, or any endorser, guarantor, or surety thereof may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member or nonmember association, institution, bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member or nonmember association, institution, bank, or affiliate or to any other person."

SEC. 304. The amendments made by this title shall apply to any deposit made or obligation issued in any State after the date of enactment of this title, but prior to the earlier of (1) July 1, 1977 or (2) the date (after such date of enactment) on which the State enacts a provision of law which limits the amount of interest which may be charged in connection with deposits or obligations referred to in the amendments made by this title.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

S.J. Res. 236	S. 2840	H.R. 7768	H.R. 14225
S.J. Res. 250	S. 3007	H.R. 7780	H.R. 14597
S.J. Res. 251	S. 3234	H.R. 11221	H.R. 15148
S. 355	S. 3473	H.R. 11251	H.R. 15427
S. 605	S. 3698	H.R. 11452	H.R. 15540
S. 628	S. 3792	H.R. 11830	H.R. 15643
S. 1411	S. 3838	H.R. 12035	H.R. 16857
S. 1412	S. 3979	H.R. 12281	H.R. 17027
S. 1769	H.R. 6624	H.R. 13561	
S. 2348	H.R. 6642	H.R. 13631	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.