Speeches FDIC

TESTIMONY OF

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ON

THE PROSECUTION OF FINANCIAL CRIMES

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
UNITED STATES SENATE

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Good morning, Mr. Chairman and members of the Committee. It is a pleasure be here today to discuss the actions the Federal Deposit Insurance Corporation and the Resolution Trust Corporation are taking to identify and punish those involved in fraud and abuse in the banking and savings and loan industries and to comment on pending legislation to improve prosecutions of financial institutions crime.

The FDIC and the RTC have long put the fight to curtail fraudulent activity in financial institutions at the top of their regulatory agendas. In the last five years, we have developed specially trained fraud squads to pursue those committing fraud and have given our examiners special tools to help in detecting such abuses. Greedy and unscrupulous individuals, insiders, advisors or related parties must not be allowed to profit at the expense of the deposit insurance funds and the American taxpayer.

Our testimony will outline the FDIC and RTC programs to prevent, detect and punish fraud and abuse by individuals and financial institutions. We also will comment on the amendments to the Senate's omnibus crime bill, S. 1970, that address financial institutions fraud and which were adopted by the full Senate on July 11, 1990. Those amendments are designed to provide the banking regulators and law enforcement agencies with additional tools to control fraudulent activities by banks and thrifts and their insiders.

The FDIC and the RTC have authority to bring civil -- but not criminal -- actions against banks and thrifts for fraudulent or other unlawful activities. Our prosecution of civil fraud cases provides an additional significant role in the prosecution of financial crimes. We investigate every failed bank and thrift to determine whether civil or criminal activity was involved in a bank or thrift failure. In addition, our examiners look carefully for evidence of fraudulent activity during the regular examination process of all open institutions. In the case of both failed and open institutions, we refer suspected criminal activity to the appropriate law enforcement agencies.

We also provide much of the basic information needed by the law enforcement agencies throughout all stages of a criminal prosecution. To that end, we participate in the regional inter-agency bank fraud working groups to encourage communication and improve coordination of criminal investigations.

The FDIC also uses administrative enforcement actions to stop fraud and abuse in operating institutions. In addition, the FDIC and the RTC bring civil suits for money damages and restitution (against officers, directors and other insiders) after an institution has failed.

Detecting and Reporting Fraud and Abuse in Open Institutions

FDIC examiners are trained to detect the signs of fraud and other illicit or improper insider actions. Potential problems

often can be uncovered when certain warning signs are evident. In 1987, we developed a list of time tested "red flags" to assist our examiners in the early detection of apparent fraud and insider abuse. The "red flag" list has been expanded once and now is in the process of being updated and expanded again. Examples of the areas that the "red flags" cover include: linked financing/brokered transactions; loan participations; offshore transactions; lending to buy tax shelter investments; and wire transfers. When "red flag" warnings are detected, specially trained members of our "fraud squad" may be called in to pursue the matter using their special training.

Training and role of examiners. New examination personnel begin their careers as Assistant Examiners and usually serve a minimum of three years before they can qualify as commissioned examiners. During these first three years, Assistant Examiners are required to attend four schools that include training in investigatory techniques and detection of insider abuse and fraud. Assistant Examiners also receive on-the-job training in the detection of insider abuse and fraud.

Through the training process, our examiners gain a familiarity with the principal criminal statutes applicable to insured institutions. They also learn how to complete the standard criminal referral forms (Reports of Apparent Crime) used by all financial institution regulators. Additionally, examiners receive instruction on potential problems and warning signs pertaining to bank fraud and insider abuse -- namely, the red

flags. The Division of Supervision's Manual of Examination Policies also sets out alternative investigative procedures appropriate to particular circumstances and addresses the handling of criminal violations when they are discovered.

An examiner's detection of management fraud or other abuse in an operating state nonmember bank generally results in one or more administrative enforcement actions by the FDIC and, in some cases, criminal referrals to the respective U.S. Attorney and the appropriate criminal investigatory agency. Criminal referrals prepared by examiners are reviewed by regional office staff and forwarded to the FBI and U.S. Attorney as soon as possible. However, when examiners detect significant apparent violations, we immediately contact the FBI and the U.S. Attorney by telephone before the examiner prepares the written referral. When requested by law enforcement agents, our examiners will assist in developing evidence and appear as expert witnesses.

Role of institutions. Bank directors and management also bear great responsibility for preventing and detecting fraud and insider abuse. Bank directors must assure that appropriate internal controls are in place. Bank management and employees who suspect a criminal violation are required -- under Part 353 of the FDIC's Rules and Regulations -- to submit Reports of Apparent Crime to the appropriate FDIC Regional Office, the U.S. Attorney, the appropriate State Banking Authority and the appropriate Federal investigative authorities (either the FBI, the Secret Service, the Postal Service, or the IRS) within

thirty days of discovering the suspicious activity. Two different forms are used for this purpose. The Report of Apparent Crime (Short Form) is used to report suspected criminal violations involving less than $10,000 and suspicious transactions that indicate possible money laundering. The Report of Apparent Crime (Long Form) is used to report suspected criminal violations involving amounts of $10,000 or greater and all cases, regardless of amount, involving an executive officer, director or principal shareholder of the institution.

Copies of Reports of Apparent Crime involving amounts of $10,000 or greater, those involving executive officers, directors and major shareholders, and those involving suspected money laundering are forwarded by the regional offices to the FDIC's Special Activities Section in Washington. Those reports are reviewed and certain data from the reports are entered into an automated records system. During 1988 and 1989, the Special Activities Section received 902 and 938 reports, respectively.

The Special Activities Section forwards Reports of Apparent Crime indicating losses of $200,000 or more to the Department of Justice for special tracking. The individual U.S. Attorneys then make decisions about which criminal cases to pursue. Reports forwarded for tracking totaled 200 in 1988 and 284 in 1989. The Department of Justice enters information from these reports into a computer tracking system and periodically advises the FDIC of their status.

Reports of Apparent Crime filed by banks usually result from such events as teller shortages, false entries, theft, false statements on loan applications, embezzlement or misapplication of funds, check kiting, mysterious disappearance of bank funds, or money laundering.

FDIC "Fraud Squad" Investigations of Fraud

The FDIC has its own "fraud squad." Created in 1986, it is a national investigations unit that investigates fraud and other criminal activities when necessary in operating institutions and in all closed insured banks and in those thrifts that were closed before January 1, 1989. (The RTC's investigatory activities will be addressed below.)

The FDIC's investigations unit is comprised of over 500 investigators and staff. (This number does not encompass attorneys, examiners and other staff who deal with fraud in their day-to-day activities, but who are not full time investigators or support staff for the "fraud squad.") Investigators receive specialized training in all phases of financial institution operations, accounting, investigative techniques and specific fraudulent schemes. The result is a team of individuals who are well equipped to look into the affairs of failed institutions, as well as operating institutions when called upon to do so.

Each time a financial institution is declared insolvent, an investigative team is dispatched to determine 1) what caused the failure, 2) whether any criminal activity took place and 3) whether any professional liability claims exist. The investigations unit currently is pursuing approximately 942 active claims and investigations.

When possible criminal activity is discovered, the investigators file criminal referrals with the appropriate law enforcement agency. Since 1987, approximately 331 such referrals have been made. The investigators also follow up on these referrals through participation in the local bank fraud working groups. These groups bring together law enforcement personnel and representatives of the financial institution regulatory agencies on a monthly basis to discuss various issues related to bank fraud and other criminal activity. Each of the FDIC's regional offices and consolidated office sites has a designated participant in the local working groups or a contact person for the U.S. Attorney's offices and relevant investigative agencies.

Participation in these groups aids financial institution civil and criminal fraud prosecution in many ways. Few people are as familiar with the records of the financial institution or have the analytical expertise as the investigative team assigned to the failed institution. This expertise is made available in formal and informal ways to aid civil and criminal authorities in discovering, documenting and prosecuting fraud. In some instances, individual investigators are assigned full-time to a grand jury investigation.

The investigations unit also documents and requests restitution pursuant to the Victim and Witness Protection Act when individuals are convicted of crimes involving failed financial institutions.

RTC Investigations of Fraud in Closed Institutions

Investigations unit. The RTC also has its "fraud squad" with a corps of trained, experienced financial investigators. The RTC's Office of Investigations -- which now has approximately 300 investigators and staff -- projects to have 300 investigators alone by year-end. The Office provides the investigatory support to initiate civil and criminal recoveries from thrift owners, managers and professionals -- such as accountants and lawyers -- who caused losses through fraudulent or criminal conduct or professional malpractice. Recoveries can come from insurance policies covering professional conduct or directly from the assets of insiders and professionals. Successful recovery, however, requires thorough investigation and, in many instances, litigation.

The investigator's task is to: gather facts about insider abuse; identify the individuals who caused the thrift's losses; assess the degree of culpability of each party -- from negligent and reckless mismanagement to fraud or criminal conduct -- and help determine whether and what sort of litigation should be initiated to maximize recoveries. Investigators are involved throughout the civil litigation process, supporting the RTC attorneys and outside counsel.

A second, but equally important, responsibility of the Office of Investigations is to assist the Department of Justice and other Federal agencies in prosecuting individuals who engaged in criminal conduct, particularly those who benefited personally at the taxpayers' expense. RTC investigators are being trained to work with law enforcement agents to achieve our mutual objectives. Similarly, law enforcement agents are being trained to understand and respect the RTC's responsibility to recover assets for the thrift receiverships.

The investigator's initial task after RTC is appointed conservator of an insolvent thrift is to conduct a preliminary investigation of the facts leading to insolvency and to prepare a "Preliminary Findings Report." As of June 30, 1990, 397 Preliminary Findings Reports had been completed, representing about 87 percent of the 454 thrifts under the RTC's control.

Insider abuse and misconduct in insolvent thrifts. As a result of our experience over the past few months, we estimate that:

- Approximately 50 percent plus of RTC-controlled thrifts have had suspected criminal misconduct referred to the Department of Justice;

- In about 40 percent of RTC-controlled thrifts, insider abuse and misconduct contributed significantly to the thrift's insolvency;

- About 15 percent of the thrifts appear to have been involved in irregular and possibly fraudulent transactions with other financial institutions.

The average asset size of RTC-controlled thrifts is about $500 million, and they are complex organizations with numerous subsidiaries and affiliates. Many were owned or dominated by one individual and operated more like real estate development organizations, investment banks, or mutual funds than thrift institutions.

This situation allows for abuse and lack of control. It creates opportunities for self-dealing, fraud, theft and other misconduct to occur unabated. The RTC works with other Federal agencies and, where necessary, retains investigators with specialty skills in securities, commodities, and other disciplines to assist in documenting complex and sophisticated schemes of abuse and misconduct by insiders and other affiliated parties.

Trends and patterns of fraud and misconduct. Evidence of insider abuse and misconduct in RTC thrifts ranges from embezzlement and loan fraud to complex schemes to generate paper accounting profits that allowed cash to flow to thrift owners through subsidiaries or personal holding companies. Many of the complex lending schemes involve over-valued property that was swapped several times between borrowers or among various thrifts. These "land flip" schemes created false values and

generated excessive fees that were parceled out to appraisers, brokers, developers and others -- including thrift insiders. Real estate development loans were made with no recourse to the borrower if the project failed. We are investigating these situations, as well as instances of unauthorized trading in mortgage-backed securities, junk bonds and other financial instruments in which insiders took the profits and pushed the losses onto the institution.

The example of Drexel Burnham Lambert and Michael Milken is a case in point. As announced in June of this year, a special FDIC and RTC task force is actively and aggressively investigating possible claims against Drexel and Michael Milken for substantial losses suffered by failed financial institutions in junk bond investments. Based on preliminary information available to us, we anticipate filing claims in the Drexel bankruptcy proceedings against the $750 million pool being administered by the Securities and Exchange Commission, and for any civil recoveries available.

Abuses are more prevalent in the Southwest and Southern California. More recent problems are arising in the Northeast and Florida. The RTC's Central Region, comprising Arkansas and 11 midwestern states, reports far and away the lowest percentage of thrifts exhibiting fraud and abuse -- less than 30 percent.

Civil Actions Against Directors, Officers, and Institution-Affiliated Parties

When an insured depository institution fails, the FDIC or the RTC becomes the legal owner of the institution's claims against its former directors, officers, employees, attorneys, accountants, and other professionals employed by the institution. In the case of every failed institution and those placed in conservatorship, the FDIC or the RTC conducts an investigation of potential professional liability claims. These investigations focus on whether the potential claim is meritorious and, if so, whether it would be cost effective to bring a civil suit seeking money damages.

The Professional Liability Section of the FDIC's Legal Division is responsible for litigating the FDIC's cases involving: directors' and officers' liability ("D&O"); attorney malpractice; accountants' liability; commodity and securities brokers' liability; claims under bankers blanket bonds; and certain appraiser malpractice cases. This section also works in conjunction with the RTC's Office of Investigations to pursue similar actions on behalf of the RTC.

Prior to February 1989, when the savings and loan conservatorship program began, the FDIC had pending investigations of professional liability claims involving approximately 500 institutions. The FDIC also had more than 100 lawsuits on file.

Following the merger with the Federal Savings and Loan Insurance Corporation (FSLIC) in August 1989 and the creation of the RTC -- which formally took over those savings institutions placed in conservatorship after January 1, 1989 -- the FDIC became responsible for the investigation of potential claims and the prosecution of viable claims involving a vastly increased caseload of institutions. The FDIC and RTC currently are conducting investigations in 1300 institutions and have filed more than 500 lawsuits against former directors, officers and other professionals for damages ranging from $1 million to $1 billion. The 1300 institutions we have responsibility for in-house can be broken down as follows:

Banks	550 Institutions
Thrifts (old FSLIC)	350 Institutions
Thrifts (RTC)	400 Institutions

In 1989, the FDIC's and the RTC's recoveries for professional liability claims totaled approximately $100 million. This figure includes old FSLIC recoveries taken in after the August 9, 1989 merger. During 1989, an additional $50 million in recoveries was received by FSLIC prior to August 9 for professional liability claims. A rough breakdown of these recoveries follows:

FSLIC Thrifts (prior to August 9)	$50 million
FSLIC Thrifts (after August 9)	$35 million
FDIC Banks (1989)	$60 million
RTC Thrifts (1989)	$4 million

Our recoveries for the first quarter of 1990 alone total more than $100 million. When I testified three weeks ago before the House Judiciary Committee, I noted that settlements and judgments during the first half of 1990 will produce recoveries totalling in excess of $200 million, or more than $1 million per day. I am pleased to report that, as of July 31, 1990, our 1990 recovery figure is approaching $300 million.

Over the past few years, the FDIC has litigated claims involving approximately 50 percent of those institutions for which it has been appointed receiver. This percentage of claims in litigation may drop somewhat -- particularly as to the RTC thrifts -- because of a scarcity of recovery sources, including D&O insurance and personal assets among many of the potential defendants.

The FDIC and the RTC contract with approximately 150 law firms to prosecute professional liability claims. Our in-house attorneys supervise and manage this litigation to ensure consistency in arguing legal issues and conformity to case plans and budgets, among other things. In-house attorneys also directly conduct settlement negotiations involving claims.

Much of the litigation now pending in the Professional Liability Section involves claims brought against former directors and officers who managed the failed institutions. These claims range from fraud and insider abuse to grossly negligent failures to conduct or supervise the financial institution's affairs.

Although historically many of the FDIC's cases are based on abusive lending practices, that is not the only basis for filing suits. We also have brought suits based on the payment of unreasonable dividends, imprudent or illegal investments in bank buildings, speculative securities trading, unreasonable compensation and expenses paid to directors and officers, and fraudulent "land flips" and other complex real estate transaction schemes.

As mentioned before, the FDIC and the RTC pursue those directors, officers, and other professionals who have committed fraud upon failed financial institutions if our investigation supports such allegations. However, it is not cost effective to pursue suits against such individuals when the litigation costs would exceed any collectible judgement. In those cases in which fraud or dishonest conduct by professionals is present, but in which the FDIC or the RTC determines that cost considerations prohibit filing civil suits, every effort is made to encourage and assist criminal prosecutions by the appropriate law enforcement authorities.

Fraud and dishonesty underlie FDIC claims brought under financial institutions "bankers blanket" or fidelity bonds. Fidelity bonds insure the financial institution against losses caused by the fraudulent or dishonest activity of an institution's employees. The FDIC and the RTC have aggressively pursued claims under fidelity bonds covering failed banks and thrifts. The FDIC's largest single recovery in the first

quarter of 1989, for example, involved the settlement of a bond claim for $60 million.

Open Institution Enforcement

The Compliance and Enforcement Section of the FDIC's Legal Division provides legal support, advice, and counsel to the Division of Supervision ("DOS") and prosecutes civil enforcement actions on behalf of DOS against depository institutions or institution-affiliated parties whose activities pose a threat to depositors or the deposit insurance funds. The Compliance and Enforcement Section acts as the "district attorney's office" for DOS, which must police the banking industry through such administrative actions. DOS and Compliance and Enforcement are the first line of protection for the Federal deposit insurance funds.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) greatly enhanced the enforcement powers of all of the Federal banking agencies. Civil money penalties for violations of laws, rules, regulations and orders have increased from $1,000 per day to ranges of $5,000 to $1,000,000 per day per violation. Call report penalties have increased from $100 per day per violation to ranges of $2,000 to $1,000,000 per day per violation. Other enforcement powers have been clarified -- such as jurisdiction over individuals separated from insured depository institutions, personal liability of individuals to insured depository institutions, records-keeping, and the like.

New enforcement powers have been added, including the right to suspend temporarily the deposit insurance of an institution operating with no tangible capital under the capital guidelines of the appropriate Federal banking agency, and the cross-guaranty provisions rendering affiliated depository institutions liable for losses reasonably anticipated by the FDIC when a commonly-controlled institution fails.

The most common administrative enforcement tool used by the FDIC is the cease-and-desist order. Cease-and-desist orders are used to halt and correct unsafe or unsound banking practices committed by state nonmember banks or individuals related to those institutions. In 1988 and 1989, the FDIC issued 98 and 97 cease-and-desist orders, respectively.

The FDIC also has the ability to terminate an insured institution's Federal deposit insurance for engaging in unsafe or unsound practices or for violations of law. As mentioned above, FIRREA also gave the FDIC the power to suspend temporarily the deposit insurance of institutions not meeting tangible capital requirements. In 1988, the FDIC initiated 77 proceedings to terminate deposit insurance. During 1989, the FDIC initiated 73 such proceedings and 1 proceeding to suspend deposit insurance temporarily.

The FDIC can remove directors, officers, and other institution-affiliated parties from any involvement in an institution's affairs if the individual violates any law or

engages in unsafe or unsound practices. The FDIC also is authorized to assess substantial civil money penalties against depository institutions and institution-affiliated parties for violations of law or outstanding enforcement orders. During 1988, the FDIC issued 33 final removal orders and assessed civil money penalties in 10 instances. In 1989, we issued 10 final removal orders and assessed civil money penalties against institutions or individuals in 9 cases. In 1990, 10 final removal orders have already been issued and 9 civil money penalties have been assessed against individuals. In general, there has been a shift in emphasis over the past few years to enforcement actions against individuals, in keeping with the FDIC's commitment to reduce insider abuse.

Cross-guaranty actions, as mentioned above, are a new enforcement power granted to the FDIC by FIRREA. In such actions, commonly-controlled depository institutions may be assessed for the loss reasonably anticipated by the FDIC due to the default of a related depository institution. The first such action was initiated in 1989.

Amendments to Senate Omnibus Crime Bill to Improve Prosecution of Thrift and Bank Fraud

On the whole, the FDIC and RTC support the thrift and bank fraud amendments passed by the Senate as part of the omnibus crime bill, S. 1970 (the "bank fraud amendments".) They would provide the FDIC and the RTC with a number of important new enforcement

tools. These new tools will allow us to combat financial institutions fraud more effectively and save money for the Federal deposit insurance funds and the taxpayers. A detailed discussion of the individual provisions of the bank fraud amendments is contained in the attachment to this statement.

Bankruptcy amendments. We strongly favor the amendments to the Federal Bankruptcy Code that would enhance the FDIC's ability to recover funds from individuals who have defrauded federally insured financial institutions. These individuals often file personal bankruptcy that results in the discharge of judgments or debts based on fraudulent, wrongful or criminal conduct. Although the FDIC has actively attempted to prevent such discharges, the Bankruptcy Code and case law interpreting it often make it difficult for the FDIC to prevent these individuals from avoiding these debts.

The bankruptcy amendments would remedy this situation. We are especially supportive of the so-called "homestead exemption" contained in those provisions. The homestead exemption would prevent individuals who have defrauded banks or thrifts from hiding their multi-million dollar homes under the protection of state law. We respectfully urge this Committee to work for the inclusion of the homestead exemption in any final fraud legislation.

Priority of claims. Section 259 is another very important provision to the FDIC and RTC. It would make the law very clear

that the FDIC and the RTC have priority over competing claims against former directors, officers, employees, accountants or other professionals that had provided services to a failed institution. This would go a long way in protecting the deposit insurance funds and the American taxpayer from the costs of bank and thrift failures.

Prejudgment attachment and fraudulent transfers. We also favor the amendment that would allow the FDIC and RTC to make prejudgment attachments of the assets of persons obligated to failed insured depository institutions. We suggest, however, that the authority be expanded to encompass enforcement actions taken by the FDIC in its corporate capacity against open institutions. We also favor the provision that would allow the FDIC to avoid certain fraudulent transfers of assets made within five years of the appointment of a receiver.

Golden parachutes. One very important area to the FDIC that is not contained in the Senate's bank fraud amendments is the authority to prohibit or limit excessive or abusive golden parachutes and similar types of payments by troubled depository institutions. The FDIC thinks it unconscionable that directors, officers and others responsible for an insured institution's failure -- or near-failure -- should be able to line their pockets with an insured institution's money at the expense of the Federal deposit insurance funds. Paying golden parachute money to a director, officer, or other responsible party in the case of a failed or failing insured institution amounts

essentially to paying that person with a check drawn on the Federal deposit insurance funds.

Golden parachute provisions are contained in the various versions of the bank fraud amendments now being considered in the House. Such provisions are very important to the FDIC and RTC in limiting the liabilities of the deposit insurance funds and taxpayers. We urge that they be included in any final legislation.

Qui tam. There are several provisions in the Senate bank fraud amendments that cause the FDIC some concern. Subtitle I of the amendments, the so-called "qui tam" provisions, would encourage private rights of action against banks and thrifts that have engaged in fraudulent activity. We have concern that these qui tam provisions could create a managerial and administrative nightmare for the FDIC and the RTC. Because private litigants have no real accountability for their actions, the FDIC and RTC would have to devote substantial resources to overseeing and monitoring those actions to ensure that they did not interfere with our own lawsuits. We could conceivably be put in the position of having to intervene as a party in some of the private suits if we thought our own positions might be adversely affected by a judicial decision. The costs to the FDIC and RTC would be significant.

The qui tam provisions run the risk of upsetting well established legal precedents, which could adversely affect the

ability of the FDIC and RTC to carry out our fundamental goals of resolving failed banks and thrifts and protecting the deposit insurance funds. We also are concerned that private parties may be less likely to share information with us on a voluntary basis if they know they can get paid for the information or use it to bring their own private rights of action. Finally, we believe that the qui tam provisions would only add to the already overloaded dockets of the Federal courts, resulting in delays of matters that the FDIC or RTC believes should have priority.

Disclosure of civil enforcement matters. We also have reservations about Section 156, which would require the disclosure of certain civil enforcement actions, because the language is somewhat unclear. The FDIC always has supported the disclosure of final enforcement orders, as evidenced by our support of the disclosure provisions contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. However, we cannot extend our support to publication of informal agreements since, by doing so, the force and effect of a valuable enforcement tool is taken away.

Voluntarily executed written agreements, letter agreements, business plans, and other such agreements are a valuable informal method of guiding institutions that have not deteriorated to the level of a formal enforcement action away from potential problems. Such plans are often "road maps" that provide regulatory guidance to institutions on avoiding potential trouble areas. The failure of an institution to

follow the suggestions in a plan is no guarantee that formal enforcement action will be necessary, nor is the entering of such an agreement the hallmark of a troubled institution. The willingness of institutions to enter into such agreements lies partly in the understanding that they will not be subject to public censure. By eliminating the impetus for these informal agreements, the only regulatory tool left to the agencies is the formal administrative action, which may not be appropriate for the institution.

It is our understanding that Section 156 is intended to require disclosure only of those administrative actions that are analogous to, and enforceable in the same manner as, final enforcement orders. But, it is not intended to require disclosure of informal memorandums of understanding and similar agreements that the FDIC and the other banking agencies might undertake. We believe the statutory language in Section 156 is not completely clear on this point. Thus, we would feel more comfortable if the language could be clarified to more closely mirror congressional intent that informal agreements are not required to be disclosed.

RTC Enforcement Division. We also have concerns about Section 258, which would require the creation of an RTC Enforcement Division to assist in pursuing criminal and civil claims against individuals associated with insured depository institutions. We do not believe that a separate RTC Enforcement Division is a necessary or cost-effective use of RTC resources.

The RTC already has established various units within its organizational structure to assist in pursuing claims against failed thrifts and the individuals associated with them. As outlined above, the RTC has its own "fraud squad" that investigates every single failed thrift to determine whether there is evidence of fraud or abuse that contributed to the institution's failure. The RTC also participates in bank fraud working groups and other interagency cooperative efforts to assist in the prosecution of financial institution crimes. In addition, the FDIC/RTC Legal Division brings claims against directors, officers, and other insiders to recover monies owed to the agencies. The goals of Section 258 can and <u>are being accomplished</u> without the necessity of micromanaging the internal structure of the RTC by requiring a separate Division.

Finally, we have reservations about Section 112. That section provides in part that a Special Counsel for the Financial Institutions Fraud Unit within the Department of Justice will be responsible for ensuring that Federal statutes relating to civil enforcement are used to the fullest extent authorized by law. While we support legislation that encourages the fullest prosecution of individuals guilty of bank fraud, we are concerned that Section 112 may unintentionally encroach on the authority of the appropriate Federal banking agencies to supervise and monitor insured depository institutions and institution-affiliated parties and to bring administrative enforcement actions against them. We would urge that this provision be clarified to ensure that the Special Counsel is

responsible for civil enforcement only with respect to statutes that are under its jurisdiction.

Conclusion

In conclusion, Mr. Chairman and members of the Committee, the FDIC and the RTC are vitally concerned with the threat that fraud and insider abuses pose to the continued safety and soundness of insured institutions and the deposit insurance funds. We believe that our aggressive enforcement efforts, the increased penalties and stronger enforcement authority provided to us in FIRREA, and the legislative initiatives now being considered by the Congress will prove to be a formidable deterrent to financial institution fraud and abuse.