FEDERAL DEPOSIT INSURANCE CORPORATION

and

RESOLUTION TRUST CORPORATION

COMMENTS ON S. 1970

AUGUST 2, 1990

This memorandum contains the FDIC's and the RTC's comments on relevant sections of S. 1970. Where appropriate, we have included in the attached Appendix revised statutory language that reflects the FDIC's and the RTC's recommended changes to the legislation. In instances where we do not specifically comment on a particular section, we either support it or defer to the Department of Justice. (Page references are to the printed amendment that was offered to S. 1970-- Document # 061012.538.)

Before beginning our comments, we want to point out that several sections of the proposed legislation use the definition of "institution-affiliated party" contained in Section 3(u) of the Federal Deposit Insurance Act. However, with regard to independent contractors such as attorneys, accountants, etc., this definition imposes a requirement that such persons act "knowingly or recklessly." In the context of bank and thrift fraud, such a standard is inappropriately strict. Therefore, we recommend that a new term, "institution-related party," be used which does not contain this "knowing or reckless" standard. [See Appendix, p. 1]

<u>Section 112, Page 8, "Responsibilities of Special Counsel"</u>

Paragraph (b)(2) provides that the Special Counsel for the Financial Institutions Fraud Unit within the Justice Department shall be responsible for ensuring that Federal statutes relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized by law to attack the financial resources of persons who have committed crimes against the financial services industry.

This provision will create confusion with regard to the authority of the appropriate Federal banking agencies to supervise insured depository institutions and institution-affiliated parties and to seek compliance with federal banking laws from these institutions and individuals. We recommend that the confusion be remedied by a clarification that the Special Counsel is to use all powers available to him under Title 18 of the U.S. Code, or by legislative history that states that the authority of the Special Counsel is not intended to interfere with the civil enforcement authority of the appropriate Federal banking agencies.

<u>Section 152, Page 14, "Restitution for Victims of Bank Crimes"</u>

The FDIC supports this provision. Section 152 would make restitution available to all victims of an offense predicated on a scheme or conspiracy, including the FDIC and RTC, whether or not a victim is specifically named in a count of conviction. It is common in prosecutions for scheme-based offenses, such as mail fraud or bank fraud, to set forth a broad scheme victimizing numerous parties, and then set forth a limited number of events as individual acts taken in furtherance of the scheme. Some courts have permitted restitution only to the victims named in those exemplary counts. This Section imposes a common sense rule that a fraud victim's right to restitution does not depend on the prosecutor's tactical charging decisions.

<u>Section 154, Page 16, "Nondischarge of Debts in Federal Bankruptcy Involving Obligations Arising From a Breach of Fiduciary Duty"</u>

This section would enhance the FDIC's and RTC's ability to object to the discharge in bankruptcy of certain judgments obtained by the FDIC against institution-affiliated parties. Section 523(a)(4) of the Bankruptcy Code provides that a debt "for fraud or defalcation while acting in a fiduciary capacity" is not dischargeable. The FDIC has had difficulty using this section since bankruptcy courts look to state law to define who is a "fiduciary" and what constitutes a "defalcation." This section specifically provides that a breach of fiduciary duty by an institution-affiliated party constitutes a "defalcation" within the meaning of Section 523(a)(4).

As we noted in our general comment at the beginning of this memorandum, we recommend that the term "institution-affiliated party" be replaced with the term "institution-related party" so that independent contractors are covered without regard to whether they acted knowingly or recklessly. [See Appendix, p. 1]

Section 155, Page 16, "Disallowing Use of Bankruptcy to Evade Capital Commitments"

The FDIC strongly supports this section. However, we suggest some revisions noted below.

Section 155(a): This provision would amend Section 1141 of the Bankruptcy Code to prevent commitments to maintain the capital of federally insured financial institutions from being discharged in Chapter 11 bankruptcy proceedings. To implement the purpose of the amendment fully, however, subsections (a) and (c) of 1141 of the Bankruptcy Code need to cross reference the proposed new paragraph (d)(4) along with the present paragraphs (d)(2) and (d)(3).

This subsection will only affect corporate debtors. Individuals who are in Chapter 11 proceedings will be treated in the same manner under new Section 523(a)(11), discussed below.

Paragraph (a)(2) provides that a debtor may not be discharged in bankruptcy from his responsibilities on any commitment to maintain the capital of an insured depository institution entered into with the FDIC, RTC, OTS, etc. However, debtors may also be subject to administrative orders issued by the various Federal banking agencies to maintain the capital of insured depository institutions, pursuant to 12 U.S.C. §§ 1818(b) and (c). We recommend that the language be clarified to ensure that any responsibilities incurred under any such orders will not also be dischargeable.

Section 155(b)(1): This provision adds new subsections (a)(11), (12) and (13) to Section 523 of the Bankruptcy Code.

New Section 523(a)(11) automatically excepts from discharge debtors' obligations to honor capital maintenance commitments if the debtor is an individual in a Chapter 7 or a Chapter 11 bankruptcy proceeding. Liability for an individual in a chapter 11 proceeding is established by reading the new section together with existing section 1141(d)(2).

New Section 523(a)(12) makes criminal restitution orders that have been imposed for defrauding financial institutions nondischargeable. In Davenport v. Pennsylvania, (decided June, 1990) the Supreme Court stated that criminal restitution is dischargeable in a Chapter 13 Plan under existing Section 1328(a) of the Bankruptcy Code. New Section 523(a)(12) would close this "loophole" for debtors in any chapter in bankruptcy.

New Section 523(a)(13) of the Bankruptcy Code makes any liability imposed by a court or the appropriate financial institutions regulatory agency based upon fraud or a defalcation in a fiduciary capacity nondischargeable.

The FDIC and RTC sue many officers, directors, and controlling persons who caused losses to insured financial institutions. Although the FDIC has been successful in recovering large judgments for damages against these individuals, these individuals often use the bankruptcy system to escape paying these judgments. The FDIC has had considerable difficulty convincing the Bankruptcy Courts to find that these judgments fit into the debts currently listed in Section 523(a) as nondischargeable. The addition of 523(a)(13) will eliminate these problems.

<u>Section 155(b)(2):</u> This provision adds new subsections (e), (f), (g) and (h) to section 523 of the Bankruptcy Code.

New Section 523(e) clarifies that an institution-affiliated party of a depository institution <u>is</u> acting in a fiduciary capacity for purposes of liability under Sections 523(a)(4) and new (a)(13). This will avoid the problem we presently encounter in dealing with the term "fiduciary capacity" of having the courts construe the term so narrowly that liability usually will only be imposed upon a showing that an actual legally enforceable trust has been violated, as opposed to the general fiduciary obligations that bank directors and officers owe an institution.

New Section 523(f) removes the requirement of a financial institution regulatory agency having to show "actual reliance" on a false written statement, including a financial statement, as a condition of proving a case for an objection to the dischargeability of an obligation under Section 523(a)(2).

The FDIC often has difficulty fulfilling the "reliance" element of proof, since many times an officer or director of a failed institution did not actually <u>rely</u> on a false statement or false financial statement in making a loan (for example, where the borrower participated in a scheme with bank officers designed to defraud the bank.) Proposed new subsection (f) would make it clear that the FDIC and RTC need not prove that it or the failed institution relied on a false statement or false financial statement in order for a bankruptcy court to find that these types of debts, when owed to the FDIC and RTC, are not dischargeable.

New Section 523(g) extends the time for a financial regulatory agency to file complaints objecting to discharge under Sections 523 and 727 of the Bankruptcy Code. Current law requires that all complaints must be filed within 60 days after the debtor's first meeting of creditors, absent an extension being granted prior to that time. The first meeting of creditors usually occurs within 20-40 days after a bankruptcy petition is filed.

New Section 523(g) would give the FDIC 120 days from the date of the debtor's first meeting of creditors, or 120 days from the date of the appointment of a conservator or receiver of a failed financial institution (whichever is longer), to file an objection to the discharge of a particular debt of the debtor. This will avoid the situation of the institution filing on the 59th day after the first meeting of creditors and the regulatory agency missing the current 60 day deadline while it is attending to matters related to the closing of the institution. The additional time is needed in many instances because the records of failed institutions are frequently not well kept. It is often difficult to discern the existence of a bankruptcy or of information that will provide the grounds for an objection under Sections 523 or 727 of the Bankruptcy Code.

In RTC purchase and assumption transactions, many loans are transferred from a receiver to an acquiror and then can be "put" back to RTC Corporate (pursuant to the purchase and assumption agreements.) We suggest, therefore, that new section 523(g) be amended to provide that the 120 days will run from the date of the appointment of the conservator or receiver, the date of the debtor's first meeting of creditors, or the date of the "put" to RTC Corporate (whichever is longer.) Such a change will greatly assist the RTC.

New Section 523(h) adds new definitions in order to reference properly some of the terms added in the proposed amendments to Section 523 to those same terms in the Federal Deposit Insurance and Federal Credit Union Acts.

New subsection 523(h)(4) defines "institution-affiliated party" by referencing 12 U.S.C. 1813(u). As we discussed on page 1, the new term "institution-related party" should be used in order to include independent contractors without regard to whether they acted "knowingly or recklessly." [See Appendix, p. 1]

<u>Section 155(c)</u>: This subsection amends Section 1328(a) of the Bankruptcy Code. Currently, criminal restitution and debts owed to the FDIC or RTC for money or property procured through fraud are dischargeable in a Chapter 13 plan under Section 1328(a). The amendments to Section 1328(a) provide that these debts owed to the FDIC or RTC would not be dischargeable.

This change to Chapter 13 is consistent with the changes to the other chapters of the Bankruptcy Code made by S. 1970 and keeps Chapter 13 from becoming the only remaining haven for institution-affiliated parties who caused losses to federally insured depository institutions. As a matter of technical drafting, the FDIC suggests that Section 155(c) be amended as shown in the Appendix, page 2.

Section 155(d): This subsection amends Section 522(c)(1) of the Bankruptcy Code to allow the FDIC and RTC to satisfy nondischargeable claims from exempt property of a debtor. Thus, not only will a debtor's exempt property be available to satisfy tax obligations, it will also be available to satisfy obligations due to having caused losses to federally insured financial institutions.

This subsection will keep former directors and officers from avoiding their obligations for losses they caused failed insured depository institutions by hiding their assets in property (for example, large and expensive homes) protected by the liberal exemptions provided by some States.

We have some technical suggestions to Section 155(d), which are attached at Appendix, page 3.

Section 155(e): This subsection amends Section 365 of the Bankruptcy Code to except capital maintenance responsibilities from disavowal as executory contracts. For this section to accomplish its intended purpose, however, it should be amended to limit the debtor's liability to the amount owed at the time the insured depository institution was declared insolvent. While the subsection is also intended to deal with Chapter 11 debtors who have continuing responsibilities to open institutions, a court would likely require that this claim be estimated, and it is unclear whether or not the financial status of an open insured institution could or should be estimated by a bankruptcy court.

Section 156, Page 23, "Disclosure of Civil Enforcement Actions"

The FDIC has 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 informal agreements are valuable methods of guiding institutions that have not deteriorated to the level of enforcement actions away from potential problems. Additionally, such agreements are used for institutions that are not in a troubled condition but are seeking guidance in an unfamiliar area of banking. By working closely with such institutions, potential trouble areas are avoided. The willingness of institutions to execute such agreements lies, in part, in assurances 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 suggest that the language be clarified to more closely mirror congressional intent that informal agreements that are not enforceable in the same manner as final enforcement orders are not required to be disclosed.

The FDIC currently collects final orders in administrative enforcement proceedings from the regional offices and publishes them as required by FIRREA, on a monthly basis. Section 156 would require publication of an order within 30 days of agency action on the order. Consequently, the Federal banking agencies would have to continually publish new orders on a daily basis. We would prefer being able to continue our existing practice of collecting all final orders and publishing them all at once on a monthly basis.

The FDIC has no objection to a public hearing requirement; however, as a technical matter, we suggest that this amendment be made to section 8(h) of the Act, 12 U.S.C. § 1818(h), which deals with hearings.

With regard to public hearings, it would seem that making the transcripts available to the public is unnecessary and would merely create an additional expense and administrative burden to the regulatory agency.

Finally, the FDIC strongly recommends that the effective date of this provision be no earlier than the date the legislation becomes effective.

Section 251, Page 33, "Concealment of Assets from Federal Banking Agencies Established as Criminal Offense"

This Section creates the crime of knowingly concealing assets against which a federal banking agency "may have a claim." However, in the criminal context, the phrase "may have a claim" is most likely too vague to pass constitutional scrutiny. We suggest that it be replaced with language patterned on the bankruptcy fraud provisions found in 18 U.S.C. §152.

Section 252, Page 34, "Civil & Criminal Forfeiture"

The FDIC supports this provision.

Section 253, Page 36, "Civil Actions under RICO"

This section expands the civil remedies pursuant to 18 U.S.C. section 1964 and allows the Chairman of the FDIC or the Chairman of the RTC, or their designees, to institute proceedings in cases where violations affect insured depository institutions. No changes are recommended.

Section 254, Page 36, "Subpoena Authority for FDIC & RTC"

The FDIC supports this provision.

Section 255, Page 38, "Fraudulent Conveyances Avoidable by Receivers"

This provision will be a welcome tool in the continuing fight to combat financial institution fraud. Section 255 provides the FDIC and RTC with the ability to avoid fraudulent transfers of assets by institution-affiliated parties and debtors, if the transfers were made within 5 years of the appointment of the receiver. (It is important to note that the definition of "institution-affiliated party" should be changed, or the new term "institution-related party" suggested above be used, in order to include independent contractors without regard to whether they act knowingly and recklessly.)

While the avoidance of fraudulent conveyances is a necessary and desirable power, the precise language of Section 255 might not be broad enough to prevent an analogous abuse. We have seen institutions, in contemplation of insolvency, formally release the personal guarantor of a loan. While such a release arguably does not involve a conveyance, the result is a reduction in the value of receivership assets just as if receivership property had been transferred. We would suggest broadening the language to prohibit such fraudulent extinguishment of obligations as well.

The FDIC also suggests that this Section be revised to provide that attempts to defraud the FDIC or <u>other federal banking agencies</u> also will result in an avoidable transfer. The provision as written is limited to fraud against the depository institution.

Further, we would add a provision that would set aside constructive fraudulent transfers (this section is currently directed at actual fraud.) We suggest a provision similar to that found in Section 548(a)(2) of the Bankruptcy Code.

Finally, this section should be amended to provide that the rights of the FDIC and RTC take precedence over the rights of a trustee in bankruptcy. Without this provision, if an institution-affiliated party filed bankruptcy it would be able (as debtor in possession, which has all the powers of a bankruptcy trustee) to argue that 12 U.S.C. 1821(d)(17) is superseded by the Bankruptcy Code with the result that 1821(d)(17) would be rendered meaningless. [See Appendix, p. 4]

Section 256, Page 39, "Prejudgment Attachments"

The FDIC supports this provision. Proposed new paragraph 18 amends Section 11(d) of the FDI Act (12 U.S.C. § 1821(d)) to provide generally for prejudgment attachment of the assets of any person obligated to failed insured depository institutions. The FDIC's recommended changes to the provision clarify the ability of the FDIC and RTC to request a prejudgment attachment in connection with any of the powers conferred on them as a receiver or liquidator by Sections 11, 12 and 13 of the Act, and deletes what appears to be an unnecessary "willfulness" requirement if the term "institution-affiliated party" is used instead of "institution-related party." (As discussed earlier on page 1 hereof.)

With regard to paragraph 4(A) on page 41, if pre-judgment attachment is limited only to section 8(i) offenses, the FDIC will lose a valuable tool in conserving assets in a restitution/reimbursement action. Thus, we also recommend that this section be changed to encompass actions under all of Section 8, as well as Sections 7 and 18 of the FDI Act.

Additionally, in the portion of this proposed legislation which proposes to amend section 8(i) of the Act, the term "court" is not defined. Since 8(i) deals with administrative hearings, it seems that perhaps the best way to accomplish this process is to require that application be made in federal court while the administrative action is pending. Section 8(h) of the FDI Act deals with hearings and judicial review. We therefore propose that this provision be added to section 8(h) of the Act, and expanded to include all civil money penalties issued by the appropriate Federal banking agency, as well as restitution/reimbursement actions.

Finally, the FDIC recommends that the power to utilize such attachments be expanded to include situations where the FDIC can demonstrate that fraud has occurred. This would parallel at least one favorable court decision obtained in the Fifth Circuit. [See Appendix, p. 5]

Section 257, Page 42, "Injunctive Relief"

Section 257 would provide authority for the FDIC, NCUA or RTC, acting in any capacity, in actions involving a scheme to defraud a financial institution, to seek injunctive relief from threatened loss without a showing of special or irreparable injury. It also provides for preliminary relief when assets may be dissipated or placed beyond the jurisdiction of the court.

We view this authority as a complement to the pre-judgment attachment authority contained in the preceding section 256. Taken together, the concepts of enjoining dissipation or expatriation of assets and prejudgment attachment are powerful weapons for the bank regulatory community. Because of the closely related nature of the two forms of relief, we believe the standards and availability of the relief should be conformed in all major respects.

In the present draft, availability of pre-judgment attachment is restricted to the FDIC in its conservatorship or receivership capacities. By contrast, injunctive relief is available to the FDIC, NCUA and RTC in all capacities. We see no reason for this distinction, and believe that all forms of prejudgment relief should be available without regard to the capacity in which an action is brought, and to all federal banking agencies.

In addition, we note that the standard for preliminary injunctive relief, which is modeled after the standard in section 256, is crafted in contemplation of an action brought in a conservatorship or receivership capacity, as demonstrated by repetitive references to "the institution." By contrast, the standard for entry of permanent relief is broader and less precise.

We would suggest that the provisions of sections 256 and 257 be combined to achieve uniform availability and to apply common standards in support of appropriate relief. We would be happy to provide alternate language.

Section 258, Page 46, "RTC Enforcement Division"

It is the RTC's position that this section is unnecessary. The RTC already has units which accomplish this function. Also, for Congress to mandate a particular structure to an agency greatly reduces that agency's flexibility to respond to new and unforeseen events.

Section 259, Page 47, "Priority of Certain Claims"

The FDIC supports Section 259, subject to the suggested changes described below. Section 259 recognizes that multiple claims for personal damages are frequently brought by shareholders, depositors and creditors following a financial institution failure. These claims compete with FDIC or RTC claims or actions against the same parties for damages suffered by the financial institution and the deposit insurance funds. The high cost of defending against multiple claims not only outstrips the personal financial resources of most defendants, but also quickly depletes even the largest professional liability insurance policies which often contain standard "wasting" provisions that allow the payment of defense costs out of the coverage limits.

Section 259 has been drafted to grant the FDIC and RTC a clear priority over such competing claims. The effect of this provision will be to allow the FDIC and RTC time to investigate and prosecute claims against former directors and officers and other professionals for losses caused the failed institution by their gross negligence, breaches of fiduciary duty, fraud or other wrongdoing. Thus, suits by the FDIC and RTC will be allowed to recoup losses on behalf of the insurance funds and other creditors of the failed institutions first before any competing claimants. This provision will greatly enhance the ability of the FDIC and RTC to recover against these parties for the benefit of the insurance funds by staying the prosecution of competing claims until the FDIC and RTC's claims are satisfied through settlement or post-judgment execution.

Although the FDIC and RTC support the priority provision, there are a number of concerns regarding the effect of the broad exception for "claims of other Federal agencies of the United States" in paragraph (a) on page 48. This broad exception will vitiate the priority proposal by allowing, for example, claims brought by the Attorney General for civil money penalties for financial crimes under Section 951 of FIRREA to proceed before FDIC or RTC claims are satisfied. We would suggest that this exception be narrowed to claims of federal agencies under Section 6321 of the Internal Revenue Code of 1986 (regarding liens for unpaid taxes) and under Section 3713 of Title 31, United States Code (regarding other government claims for indebtedness). Also, the priority should apply to any claim under section 12 of the FDI Act, as well as sections 11 and 13 which are already included. In addition, we suggest that a sentence be added to subsection (a) of this section to make it clear that the priority extends to the prosecution of any suit and the execution and satisfaction of any subsequent judgement. We have attached suggested language. [See Appendix, p. 6]

We also recommend that paragraph (a)(1) be revised to clarify the priority and need for notice over competing claims that are pending at the time the Corporation acquires its claims.

The final sentence of paragraph (a)(2), on page 49, is unclear. It should be redrafted to make it clear that the FDIC will not have a priority if a court finally adjudicates that the assets in question are unavailable to satisfy judgments obtained by the FDIC or RTC.

Finally, we suggest the following explanatory language concerning the prospective applicability of this provision:

> Section 259 would provide a priority for the FDIC over certain competing claims against directors, officers, accountants, attorneys and other parties. Several trial courts previously recognized this priority while others did not. Most recently a federal appeals court reversed a district court order which had recognized the priority. Section 259 would clearly grant the FDIC a priority as to claims which are filed after enactment. With regard to pending claims, the provision will be completely neutral. That is, it should neither support nor undercut any party's position with regard to whether the FDIC is already entitled to a priority under existing law.

<u>Section 260, Page 49, "Expedited Procedures for Certain Claims"</u>

The FDIC supports this provision; however, we recommend that the 10, 60 and 90 day time frames be lengthened to 30, 120 and 180 days, respectively.

<u>Section 351, Page 51, "Interagency Coordination"</u>

This section specifically authorizes the agencies to provide and the Attorney General to accept the assistance of agency attorneys and investigative personnel to assist the Department of Justice in the prosecution of crimes affecting savings associations.

In principle, we support this provision, although we see no real need for it. The Department of Justice already can reach the same result through designation of agency attorneys as Special Attorneys or Special Assistant U.S. Attorneys and designation of other agency employees as agents of a grand jury.

Section 352, Page 52, "Foreign Investigations"

The FDIC is of the opinion that this provision is unnecessary since these functions are already being accomplished.

Sections 401-469, Page 55, "Private Rights of Action"

While the FDIC acknowledges that these sections of the bill have been amended in an effort to address some of the concerns that we have previously expressed, it is still our opinion that these legislative initiatives would substantially burden the supervisory function and, therefore, we cannot endorse them.

New Section 503, Page 90, "Clarification of FDIC Authority"

This is a new section that will cure a major problem that the FDIC is currently facing with respect to FSLIC Resolution Fund institutions.

The FSLIC Resolution Fund provisions, as currently codified, create two basic problems:

1. The Corporation, in managing the FRF, is not explicitly given any of its normal powers under Sections 9, 11, 12, 13 or 15 of the FDI Act.

2. Nowhere in FIRREA is the FDIC explicitly appointed receiver for savings and loan associations that failed prior to January 1, 1989.

These two problems have been exhibited in many different ways. When the FDIC, as receiver for pre-January 1, 1989 receiverships, has brought suit to collect on notes, litigants have argued that the FDIC is not the receiver for these institutions. They have alternatively argued that even if the FDIC is receiver, it has none of its receivership powers under Section 11 of the FDI Act. Similarly, certain title insurance companies have refused to issue title insurance to FDIC as receiver, arguing that they cannot find any reference to these pre-January 1, 1989 receiverships in FIRREA. Similar problems exist when the FDIC has attempted to collect on assets that are in the FRF.

In crafting a legislative clarification of FIRREA to correct these problems, it is important to maintain the distinction between FRF assets and liabilities and the assets and liabilities of each of the pre-January 1, 1989 receiverships. The FSLIC Resolution Fund is only composed of those assets and liabilities that belonged to FSLIC in its corporate capacity (i.e., those assets that the FSLIC corporate purchased as part of its S&L assistance agreements). The pre-January 1, 1989 receivership estates each have their own assets and liabilities. Any receivership liability can only be paid from the liquidation of that failed institution's assets. If this distinction were to be blurred, the FRF could become responsible for these receivership liabilities.

To clarify FIRREA and correct the existing problems we need the two provisions set forth below. However, the more important of the two provisions is paragraph (9).

Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(a)) is amended by inserting after subsection (7) the following new paragraphs:

"(8) Use of FDIC Powers. -- As of August 10, 1989, the Corporation shall have the same rights, powers and authorities to carry out its duties with respect to the assets and liabilities of the FSLIC Resolution Fund as the Corporation has under sections 9, 11, 12, 13 and 15 with respect to insured depository institutions."

"(9) Corporation as Receiver. -- As of August 10, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any institution for which the Federal Savings and Loan Insurance Corporation was appointed conservator or receiver on or before December 31, 1988. When acting as such conservator or receiver, the Corporation shall have all of the rights, powers and authorities as the Corporation has as a conservator or receiver under this Act."

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