SUPERVISORY AND ENFORCEMENT EFFORTS
OF THE FEDERAL DEPOSIT INSURANCE CORPORATION
ADDENDUM TO TESTIMONY
FOR THE COMMERCE, CONSUMER, AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS
THURSDAY, MARCH 15, 1990

The following is the Federal Deposit Insurance Corporation's written response to questions posed by the Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations in a letter dated February 14, 1990. This response will be further augmented by the testimonies of Paul G. Fritts, Director, Division of Supervision, Associate General Counsel Arthur L. Beamon, and Assistant General Counsel Thomas A. Schulz.

A. Nature and extent of abuse and misconduct in financial institutions:

1. (a) Provide updated data on the number of insolvent thrift institutions for which misconduct was identified (or otherwise present) during 1987, 1988, and 1989, based on the same three criteria and broken down in the same manner as the data which the FHLBB provided in 1987[1/]; (b) specify the estimated losses to the deposit insurance fund from these insolvent thrifts; and (c) specify the percentage these institutions constitute of the overall number of insolvent thrifts for each year.

[1/]Misconduct is and was defined as conduct by an insider or affiliated outsider that resulted in a formal or informal enforcement action, a criminal referral, or a FSLIC lawsuit filed (after insolvency) to recover losses resulting from intentional wrongdoing or negligent attention to fiduciary duties. See p. 10, n. 35, of House report 100-1088 (subcommittee's 1988 study). This information is now within the FDIC, since its incorporation of the FSLIC.

Response:

(a) The number of thrift institutions for which misconduct was identified is as follows:[2/]

Year	Thrifts Where Misconduct Was Identified (1)	Failed Institutions (2)	Open Thrifts Receiving FSLIC Assistance (3)	Problem Institutions (4)
1987	234	79	50	28
1988	203	84	36	36
1989	170	49	11	41

(1) Misconduct is defined as conduct by an insider or affiliated outsider that resulted in a formal or informal action or a criminal referral. An insider is an officer, director, or controlling shareholder. An affiliated outsider means other shareholders and major borrowers of the institution.

(2) "Failed" institutions are those placed in receivership.

(3) These are institutions merged or acquired with FSLIC assistance or placed in the management consignment program ("MCP").

(4) "Problem institutions" are those that were assigned a composite MACRO rating of 4 or 5. This definition was chosen in lieu of "significant supervisory cases" since the Significant Supervisory Case List is no longer in use.

(b) The resolution of all insolvent thrifts from January 1, 1989, to August 9, 1992, is the responsibility of the Resolution Trust Corporation under FIRREA. The Savings Association Insurance Fund, which was created by FIRREA to separately insure thrifts was, and is, not at risk for insolvent thrift institutions during the time frames requested. Pertinent information on thrifts prior to 1989 may be available from the Office of Thrift Supervision. The FDIC does not have data available that would allow it to determine losses to the FSLIC insurance fund.

[2/] These figures were obtained with the cooperation of the Office of Thrift Supervision. The figures do not include misconduct identified in the Professional Liability arena; however, information on Professional Liability actions instituted against thrift-related individuals is included in Question B(2) below.

(c) We defer to the Office of Thrift Supervision for the percentage of thrifts which constitute the overall number of insolvent thrifts for each year.

2. (a) Provide the same data requested in 1. on the number of insolvent banks, using the same criteria and with the same breakdowns; (b) specify the estimated losses to the FDIC from these insolvent banks; and (c) specify the percentage which these institutions constitute of the overall number of insolvent banks for each year.

Response:

(a) The following chart provides the number of insolvent banks for which misconduct was identified (or was otherwise present) during 1987, 1988, and 1989 and (c) the percentage which these institutions constitute of the of the overall number of insolvent banks for each year.

	1987	1988	1989
Number of banks which failed	184	200	206
*Number of failed SNM banks	112	95	82
Number of failed banks where misconduct identified	77	62	52
Percentage of failed banks where misconduct identified	42%	31%	25%

Commonly, directors' and officers' liability suits are filed after an investigation that lasts two to three years. Consequently, it is not possible to tell how many bank failures during 1987 through 1989 will result in D&O suits. It should also be noted that, even when claims on the merits exist, suit is not filed unless there are believed to be sufficient recovery sources to make the suit cost effective. With those qualifications, our experience suggests that suits will be filed (or settlements agreed to) involving roughly half of the failures that occurred during the 1987-1989 period.

(b) Although the question asks for the estimated losses to the deposit insurance fund from failed state nonmember banks where misconduct was identified, the FDIC does not track this information in the manner requested. Consequently, the following

figures apply to estimated losses to the deposit insurance fund from all failed institutions:

ESTIMATED LOSSES TO FDIC DEPOSIT INSURANCE FUND*
(In $ millions)

1987	1988	1989 (est.)
3,066	7,364	3,964

*Includes losses on arranged assistance transactions and provisions for estimated losses not yet sustained. Excludes administrative operating expenses. Losses attributable to all institutions are shown because losses wherein fraud was present cannot be extracted from FDIC records.

3. For the same three years, please specify the numbers of SNM banks in which misconduct was identified (i.e. resulted in a formal enforcement action or a criminal referral) and for each number indicate the number of such banks which subsequently failed.

Response:

Formal Enforcement Actions Taken Against Insiders -

	1987	1988	1989
Number of Banks Involved:	24	46	22
Number of Banks which Failed:	5	13	7

Criminal Referrals Involving Insiders -

	1987	1988	1989
Number of Banks Involved:	358	331	330
Number of Banks which Failed:	37	28	20

4. Describe any recent discernible trends or patterns of fraud or misconduct, including the schemes and areas of the country most affected. (For example, is the FDIC finding problems with real estate lending, as is the OCC?)

Response:

The soft real estate market, especially in the New England area, has adversely affected many of the area's banks. With a decline in asset quality in many of these banks, we are noticing an increase in the number of reports of apparent crime concerning commercial real estate loans. In many instances, the commercial real estate loan portfolios in these banks increased at an above average rate, and the loans at inception were poorly structured and poorly documented. The reports of apparent crime most frequently recite false financial statements, improper disbursement of loan proceeds, nominee borrowers, inflated appraisals, and failure to disclose material facts.

B. Recoveries from FDIC and FSLIC lawsuits:

1. For the years 1988 and 1989, please provide (a) the total dollar amount of FDIC recoveries from lawsuits against bank directors, officers, shareholders, and other insiders and affiliated outsiders, in connection with insolvent FDIC-insured commercial banks, and the number of such banks involved, (b) the number of such pending lawsuits at present, and (c) the total amount of fidelity bond claim recoveries and the number of insolvent commercial banks involved.

Response:

For 1988, total dollar amount of FDIC recoveries on Director and Officer ("D&O") actions was approximately $69,000,000 - covering 60 institutions. For fidelity bond actions, the total dollar amount of FDIC recoveries was approximately $24,000,000 - covering 48 institutions.

For 1989, total dollar amount of FDIC recoveries on D&O suits was approximately $45,000,000 - covering 56 institutions. For fidelity bond actions, the total dollar amount of FDIC recoveries was approximately $12,000,000 - covering 27 institutions.

The number of pending professional liability lawsuits is approximately 125.

2. For the years 1988 and 1989, please provide the same data for thrift institutions, as requested in 1. above.

Response:

For 1988, total recoveries for thrift institutions were $109,000,000. This includes D&O, professional liability and fidelity bond claims. The figures also include collections on certain loans. Consequently, the figure is somewhat higher than would be the case if only professional liability and bond claim recoveries were reported.

For 1989, total recoveries for thrift institutions were $87,000,000, which covers 56 institutions. This includes D&O, professional liability, and fidelity bond claims ($8,000,000 of this sum is attributable to bond claim coverage). Information is not currently available as to whether any of this amount is attributable to concurrently instituted collection actions prior to August 9, 1989. The figure excludes such recoveries for the post-August 9th period.

The number of pending professional liability suits is approximately 175.

C. Implementation of FIRREA "pay" provisions and FDIC manpower levels:

1. Report on the FDIC's implementation of the "pay" and "comparability" provisions in FIRREA, namely section 1206; and describe (a) actual percentage salary and pay differential increases, (b) the impact on retaining experienced personnel, if known, and (c) any problems with these FIRREA provisions.

Response:

Prior to the passage of FIRREA in August 1989, the bank regulatory agencies -- FDIC, OCC, FHLBB, NCUA, and the Federal Reserve Board -- agreed to share information concerning the compensation levels of their respective employees. It was also agreed to share pertinent information relating to bonuses and other benefits to which these employees might be entitled. Section 1206 of FIRREA expanded upon this by mandating that the various financial institution regulatory agencies, now including the Federal Housing Finance Board, the Oversight Board of the RTC, the Farm Credit Administration, and the OTS, provide such information to each other and the Congress in order to further the interests of maintaining comparability in the pay and benefits area.

These agencies are aware of the compensation adjustments made by the Corporation, the most significant of which occurred on May 7, 1989. On that date, the Board of Directors approved a 10% pay increase for all employees. To a large degree, this raise was prompted by the increased work employees had been called upon to perform following the FDIC's February 1989 assumption of conservatorship responsibilities for the savings and loan industry. This pay increase, which predated FIRREA's enactment by several months, was made consistent with the Corporation's longstanding independent paysetting authority.

The most recent adjustment to FDIC base salary rates occurred effective January 1, 1990, when the Board adopted the 3.6% government-wide COLA increase for all employees serving at the grade 15 level and below. Additionally, adjustments were made to the Corporation's salary differential schedules for calendar year 1990; Appendix C-1 lists, by specific geographic locations, these differentials as percentages of base pay.

Over the years, the Corporation has had a relatively low level of attrition in all occupational categories. Our ability to adjust levels of pay and to offer our own benefits package has enabled us to attract highly qualified personnel and to compete effectively in the labor market. As such, the "pay" and "comparability" provisions of FIRREA have changed little about the way the Corporation has traditionally operated.

Appendix C-2 provides the requested data on Bank Examiner and supervisor personnel levels at year end 1988 and 1989, including turnover and new hires.

2. Provide updated data on examiner and supervisor personnel levels at year end 1988 and 1989, including turnover and new hires.

Response:

FIELD EXAMINERS

	1988	1989
Beginning Number of Field Examiners	1,909	1,983
New Hires	284	504
Number Leaving	(237)	(234)
Net Transfers from (to) other FDIC Divisions, WO and RO	27	(30)
Ending Number of Field Examiners	1,983	2,223
Turnover Ratio	12.0%	10.5%

SUPERVISORY PERSONNEL*

	1988	1989
Beginning Number of Supervisors and Professionals	337	333
Number Leaving	(24)	(21)
Net Transfers from (to) other FDIC Divisions and Field Examiner Status	20	62
Ending Number of Supervisors and Professionals	333	374
Turnover Ratio	7.2%	5.6%

*Combines supervisors and professional support staff in both the Washington Office (WO) and Regional Offices (RO).

D. Supervision and civil and regulatory enforcement:

1. Supervision: (a) Provide for 1988 and also 1989, the actual examination frequency for both problem and non-problem SNM banks and also the average examination cycle times for closed SNM banks, [3] and (b) describe any changes in the FDIC's examination frequency policy, since 1987.

Response:

(a) In 1989, we conducted 4,089 on-site safety-and-soundness examinations (including 375 of savings and loans) compared to 4,019 in 1988 and 3,653 in 1987. We had expected to do considerably more than 4,089 in 1989, but had to revise that goal due to our involvement as conservator for insolvent thrifts.

As of December 31, 1989, over 90 percent of the 4- and 5-rated state nonmember banks had undergone an FDIC examination, visitation, or state examination within the preceding twelve-month period. The others are monitored closely, already have supervisory corrective action in place and, in most cases, have been examined within the last two years.

Also, as of December 1989, only two percent of all 1- and 2-rated state nonmember banks have not had an FDIC or acceptable state examination or visit within the last three years. This percentage has been declining for some time now and we expect this trend to continue.

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[3] This updates the data provided to the subcommittee in 1987 and 1988, as set forth on p. 63 of House report 100-1088.

The following chart has been developed regarding examination cycle times for closed state nonmember banks. Additionally, attached as Appendix D-1-a are the FDIC's Regional Director Memoranda concerning examination frequency.

FDIC Examination Interval in Months	Closed 1988	Percent	Closed 1989	Percent
1 through 12	79	83.2%	69	84.2%
13 through 18	12 *	12.6%	6	7.3%
19 through 36	2 **/#	2.1%	7 ##	8.5%
Over 36	2 ***	2.1%	0	0.0%
TOTAL	95	100.0%	82	100.0%

* Five, ** one, and *** two, respectively, involved First RepublicBank units in Texas which were being monitored with presence at only largest units as closing approached.

One had a state authority examination within nine months of closing.

Six had a state authority examination within nine months or less of closing, and one had such an examination at 13 months.

(b) Today's banking environment demands that we identify emerging trends and potential areas of risk and pinpoint individual banks with symptoms of higher than normal risk. The traditional methods of conducting on-site examinations based on fixed examination cycles have given way to more continuous methods of supervision. Our current program uses on-site examinations and visitations complemented with off-site monitoring, exchanges of information with other regulators (state and federal), and the use of supervisory guidelines, policy statements, and rules and regulations.

Our experience in recent years has indicated the need to increase the level and frequency of on-site supervision. As a result, in July of 1988 we revised our statement of goals regarding examination priorities. Our goal is to have an on-site examination every 24 months for well-rated institutions (those rated 1 or 2) and one every 12 months for problem and near-problem institutions (those rated 3, 4, or 5). The intervals for those rated 1, 2, or 3 can be extended if an acceptable state examination is conducted.

2. Regulatory enforcement: Set forth the (a) numbers of final formal and informal FDIC civil enforcement orders for 1988 and 1989, broken down in the same manner as in the subcommittee's 11/19/87, hearing record, and (b) the amounts of (i) CMP assessments and funds actually recovered and (ii) also restitutions in connection such orders, for these two years.

Response:

The following material has been developed regarding the number of informal FDIC enforcement activities:

Memorandums of Understanding	1988 Problem	1988 Nonprob	1988 Total	1989 Problem	1989 Nonprob	1989 Total
Safety/Soundness	109	147	256	115	213	328
Other Purposes	9	69	78	12	69	81
Total	118	216	334	127	282	409

Formal Board Resolutions	1988 Problem	1988 Nonprob	1988 Total	1989 Problem	1989 Nonprob	1989 Total
Safety/Soundness	24	150	174	30	169	199
Other Purposes	5	72	77	8	54	62
Total	29	222	251	38	223	261

The following material has been developed regarding the number of formal FDIC civil enforcement orders set forth in the manner of previous submissions to the Subcommittee:

1988	1989	Categories of Civil Enforcement Actions
		Section 8(a)
77	73	Termination of Insurance Proceedings Initiated
34	17	*SNM Problem Banks Which Failed
9	21	*SNM Problem Banks Which Did Not Fail
34	35	*National and State Member Banks
1	3	Final Termination of Insurance Order
0	1	Temporary Suspension of Deposit Insurance
		Section 8(b)
98	97	Orders to Cease and Desist
20	8	*SNM Problem Banks Which Failed
78	89	*SNM Problem Banks Which Did Not Fail
		Section 8(c)
5	1	Temporary Cease and Desist Orders
		Section 8(e)
10	10	Notice of Intention to Remove from Office
33	10	Final Removal Order
		Section 8(g)
0	1	Temporary Suspension
	Civil Money Penalties Assessed	
10	9	Assessment of Civil Money Penalty

During 1988, there were civil money penalties aggregating $2,855,000 assessed against 18 individuals, with $7,500 paid to date. One individual, Daniel K. Connors, was responsible for $2,488,000 of the penalties assessed in 1988. Currently, his case has been referred to the appropriate U.S. Attorney's office for collection.

During 1989, there were civil money penalties aggregating $2,692,750 against 47 individuals, with $57,250 paid to date. Virtually all the remainder is currently being litigated between the FDIC and the various respondents.

As has been reported in previous submissions to the subcommittee, the FDIC is unable to provide information on restitution made by individuals on behalf of open FDIC-supervised institutions and failed FDIC-insured institutions; although such restitution is sought where deemed appropriate, centralized records are not maintained regarding amounts involved.

3. Results of FIRREA Title IX implementation:
(a) List and then describe each FDIC interpretation and application of the new regulatory enforcement provisions, including all proposed and actual policy statements, guidelines, and regulations--especially (although not exclusively) with regard to FIRREA sections 904, 907, 910, 913, 914, 916, 917, and 918, and provide copies of any such written material; and (b) Describe any problems, uncertainties, or concerns, with regard to any provision in Title IX or its application.

Response:

For ease of reference, our response is divided into sections by type of enforcement power. Each section incorporates the answer to question 3(a), and to 3(b), if appropriate:

Section 902 of FIRREA

(a) Section 902 amended section 8(b) and 8(c) of the Act, 12 U.S.C. § 1818(b) and (c), respectively, which pertain to an agency's cease-and-desist authority.

The amendments to section 8(b) of the Act were largely to clarify powers the FDIC had already been exercising with regard to cease-and-desist actions, and consequently, it has not been necessary to issue any new guidance in this regard. We expect that the extension of section 8(b) jurisdiction to institution-affiliated parties will enhance our ability to ensure that unacceptable practices by banks and institution-affiliated parties are curtailed. Copies of section 8(b) cease-and-desist orders instituting the new FIRREA powers are attached. (Appendix D-3, No. 1) With regard to the changes made to section 8(c) regarding our authority to issue temporary cease-and-desist orders, we would expect that the amendments will make it somewhat easier to sustain such an emergency action.

(b) The only problem we anticipate at present regarding the amendments found in section 902 of FIRREA concerns the action that the FDIC can order in connection with a temporary cease-and-desist action under 8(c) of the Act. As you are aware, the purpose of the section 8(c) temporary order is to effect relief

which cannot wait until the permanent cease-and-desist order which is the result of the accompanying section 8(b) proceeding becomes effective. Since section 8(c) limits the FDIC to the remedies listed in section 8(b)(6)(B), there is no specific remedy available under section 8(c) regarding guarantee against loss. It is necessary that provision be made for escrowing of disputed amounts in section 8(c) actions and/or for the posting of bonds for disputed amounts, as an affirmative remedy pending disposition of the attendant section 8(b) action.

Section 904 of FIRREA

(a) Section 904 of FIRREA amended section 8(e) of the Act, to add a new subsection (7) which imposes an industry-wide bar prohibiting any individual, who has been removed or suspended from office, from holding office or participating in the conduct of the affairs of any insured depository institution and certain other institutions, without the approval of the appropriate Federal banking agency.

FIRREA is silent regarding the effective date of this section. The FDIC takes the position that the section may be applied retroactively to cases in which the section 8(e) order is entered based on conduct occurring prior to the enactment of FIRREA. Several FDIC Regional Offices took strongly opposing points of view on this issue. The attached memorandum and brief, and the transmittal letters referenced below under section 908, reflect the official position of the FDIC. A memorandum from the Kansas City Regional Office expressing a contrary view on the issue is also attached. (Appendix D-3, No. 2) The discussion relating to section 908 of FIRREA, below, is also relevant to this issue, insofar we did not initially rely exclusively on the language in section 904, but also on that of section 908, to extend the industrywide bar to individuals who had entered stipulations prior to FIRREA, but against whom orders were entered after the enactment of FIRREA.

Section 905 of FIRREA

(a) Section 905 of FIRREA amended section 8(i) of the Act, 12 U.S.C. § 1818(i), to allow the FDIC to initiate enforcement proceedings against an institution-affiliated party despite the closing of the insured depository institution or the resignation from office or termination of employment or participation, or other separation of the institution-affiliated party, so long as the action is commenced within six years of the date such party ceased to be an institution-affiliated party, whether such date occurs before, on or after the date of enactment of the section. This amendment was a response to the Supreme Court decision in Stoddard v. Board of Governors of the Federal Reserve System, 868 F.2d 1308 (D.C. Cir. 1989) which, in effect, removed jurisdiction from the FDIC once an individual was no longer in office or

participating in the conduct of affairs of the institution.

The FDIC takes the position that the section overrules Stoddard and may be applied to confer jurisdiction in cases in which the Respondent had been separated from the institution prior to the initiation of the action and before the enactment of FIRREA. As indicated under section 904 above, several FDIC Regional Offices took strongly opposing points of view on the issue. Attached is a copy of a memorandum which supports the official FDIC position. (Appendix D-3, No. 3) A copy of a brief supporting this position, as well as a memorandum from the Kansas City Regional Office reflecting the opposing point of view are referenced under section 904, above.

Section 907 of FIRREA

(a) Section 907 amends sections 8(i) and 18(j) of the Act, 12 U.S.C.§§ 1818(i) and 1828(j), respectively, regarding civil money penalties. Because the sections' provisions apply for the most part to conduct engaged in after the date of FIRREA, we do not yet have the benefit of experience in applying the larger penalties. We have, however, met with the other financial regulatory agencies to determine a procedure for assessing civil money penalties under the new statute. Discussions to date have involved amending and perhaps adopting a matrix such as that in use by the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

Section 908 of FIRREA

(a) Section 908 of FIRREA imposes a maximum fine of $1,000,000 and imprisonment of not more than five years or both, upon any person who, while subject to an order in effect under section 8(e) or 8(g) of the Act, without the prior written consent of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner in the conduct of the affairs of any insured depository institution, any institution treated as an insured bank or savings association, any insured credit union, any institution chartered under the Farm Credit Act, or the Resolution Trust Corporation.

We have interpreted section 908 as applying to any individual against whom there is outstanding an effective order of removal or prohibition, including those individuals who entered stipulations prior to the enactment of FIRREA, but against whom an order was not issued until after the enactment of FIRREA. Attached are copies of transmittal letters we sent to such individuals. (Appendix D-3, No. 4) In effect, we relied upon the language of section 908 to impose an industrywide bar against these individuals. The attached transmittal letters reflect the position of the FDIC on this section.

Section 910 of FIRREA

(a) Section 910 of FIRREA amended section 19 of the Act, 12 U.S.C. § 1829, which pertains to unauthorized participation by convicted individuals. Attached are copies of recent letters we have sent regarding the application of section 19. (Appendix D-3, No. 5). Of particular note is that sent to Drexel, Burnham, Lambert & Co., which addresses the definition of "person" contained in section 19. We are currently in the process of drafting a policy statement which attempts to define the particular kinds of persons and conduct to which the section will apply.

(b) Regarding the penalty for unauthorized participation by convicted individuals, we ask that "conviction" here include the same language as the new section 8(g), 12 U.S.C. § 1818(g), i.e. "agreement to enter a pre-trial diversion or other similar program." We also ask that the caption for section 19 be changed, deleting "individual" and inserting instead "person."

Section 911 of FIRREA

(a) Section 911 of FIRREA amended section 7(a) of the Act, 12 U.S.C. § 1817(a) regarding penalties for late filing or the inaccurate filing of banks' Reports of Condition and Income, to increase the amount of penalties that can be assessed. These penalties apply to reports due after August 9, 1989.

Enclosed are copies of the financial institutions letter that was sent to banks informing them of the new penalties, and letters sent to banks against which we are contemplating assessing civil money penalties for violation of the filing requirements. Also attached are copies of a sample Stipulation and Consent Order to Pay, as well as a sample Notice of Assessment of Liability. The increased penalty amounts have already generated an outcry from the banking industry. Responses of several institutions to the new, higher penalties, as well as one from the Kansas Bankers Association, are also attached. To date, we are in the process of assessing penalties under the new statute against eleven institutions. (Appendix D-3, No. 6)

(b) The statute, as amended, provides for a three-tier system of assessing civil money penalties for the late filing of Reports of Income and Condition ("Call Reports"), or for filing false and misleading Call Reports. The first two tiers assess maximum amounts of $2,000 and $20,000 per day, respectively, based on either of the failure to file or a false and misleading filing. The third tier, however, appears to limit the application of its maximum penalty only to false and misleading filings, despite the fact that its language pertaining to the actual assessment of the penalty states that the maximum $1,000,000 per day penalty amount continues "for each day during

which the failure continues." (emphasis added). This may be a technical oversight in the statute, and we would suggest the following underlined addition:

> (B)...Notwithstanding the previous sentence, if any such bank knowingly or with reckless disregard fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or knowingly and with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

Section 912 of FIRREA

(a) Section 912 of FIRREA added section 8(t) of the Act, 12 U.S.C. § 1818(t), to give the FDIC back-up enforcement authority against savings associations. We have added to our number of bank examiners, and our examiners in the field have begun to accompany the OTS on their examinations of savings institutions. A press release reflecting these initiatives is attached. (Appendix D-3, No. 7)

Section 913 of FIRREA

(a) Section 913 of FIRREA added section 8(u) to the Act, 12 U.S.C.§ 1818(u), to require the disclosure of final agency orders. Attached is a memorandum to the Board of Directors of the FDIC which addresses the proposed implementation of this section. In sum, the FDIC proposes to release, or has already released (1) a list of the names of institutions and institution-affiliated parties that have been subject to final orders of administrative enforcement proceedings that have issued since August 9, 1989; (2) a list of the names of institutions and institution-affiliated parties that have been subject to modifications and terminations of final orders against them since August 9, 1989; (3) on a monthly basis, a list of final actions, and modifications and terminations thereof, taken by the FDIC against institutions and institution-affiliated parties; and (4) all final orders issued since August 9, 1989, and the modifications and terminations thereof. Copies of two memoranda to all Regional Counsel (Supervision), concerning the attached press release and the gathering of information to effect this proposal are also attached. The FDIC is also in the process of accepting bids from publishers to publish a formal volume of all FDIC enforcement decisions and final orders, including modifications and terminations thereof. A copy of the request for proposals is attached. (Appendix D-3, No. 8)

Section 914 of FIRREA

(a) Section 914 of FIRREA added section 32 to the Act, 12 U.S.C. § 1831i, regarding agency disapproval of senior executive officers of insured depository institutions or holding companies thereof. Attached is a copy of the regulations promulgated by the FDIC regarding applications from such entities, as well as a copy of the procedural rules applied to implement these provisions. (Appendix D-3, No. 9)

Section 916 of FIRREA

(a) Section 916 of FIRREA allows the FDIC and other financial institution regulatory agencies two years within which to establish their own pool of administrative law judges and to adopt uniform rules of procedure for administrative hearings. We have held several meetings with the other agencies to accomplish this purpose.

Section 917 of FIRREA

(a) Section 917 mandates the creation of a task force to study delegation of enforcement actions. This task force has met on several occasions already and is in the process of establishing representation criteria among the agencies. Each agency has to date shared with the other agencies its existing delegations, including those delegations recently implemented by the Office of Thrift Supervision. The FDIC already has extensive delegations of enforcement actions in effect, as can be seen from the attached regulations, 12 C.F.R. Part 303. Discussions have been implemented concerning the various differences. (Appendix D-3, No. 10)

Section 918 of FIRREA

(a) Section 918 directs the agencies to submit an annual report to Congress. The first annual report is due in August, 1990. In preparing for this testimony it appears we have accomplished a great deal in gathering information required by the annual report.

Section 926 of FIRREA

(a) Section 926 of FIRREA amended section 8(a) of the Act, 12 U.S.C. § 1818(a), which pertains to the termination of deposit insurance. Between August 9, 1989 and December 31, 1989, there were thirteen 8(a) actions initiated under FIRREA involving the involuntary termination of deposit insurance. Numerous such actions are currently in process, some of which are against savings associations. There has been one temporary suspension of deposit insurance.

The new law changed the procedure involved in section 8(a) involuntary insurance termination actions by requiring that a maximum of thirty days notice, setting forth the basis for the action, be provided to the appropriate Federal banking agency of an institution before a formal Notice of Intent to Terminate Insured Status ("Notice") is issued. The appropriate Federal banking agency may agree to shorten or eliminate the time period required for notice. To comply with these procedural requirements, we drafted a "Notification to Primary Regulator of Findings" ("Notification") to be served upon the Primary Regulator in all such cases. Sample copies of the Notification are attached. (Appendix D-3, No. 11)

In addition, FIRREA expanded our jurisdiction under section 8(a) to savings associations. To gather the information necessary to determine whether an 8(a) action against a savings association would be appropriate, we have worked closely with the Office of Thrift Supervision (OTS), which sets the capital standards for those institutions. Our examiners have accompanied OTS examiners on their examinations of such institutions, and in all cases in which potential action was contemplated, we have conferred with OTS regarding the ultimate resolution of the case. Currently, several are in process.

(b) To date, our general experience with the new 8(a) provisions has been positive. The only significant problem posed by FIRREA regards section 8(a)(8) of the Act, 12 U.S.C. § 1818(a)(8), which provides for an order temporarily suspending deposit insurance in cases in which an institution has no tangible capital. Such a temporary order can be issued, however, only if a permanent action to terminate deposit insurance under section 8(a)(2) of the Act, 12 U.S.C. § 1818(a)(2), is pending. As indicated in the response to 3(a) above, prior to formally commencing such a permanent action, a potential maximum of thirty days notice must be provided to the Primary Regulator where the Primary Regulator is a Federal banking agency.

The foregoing requirements are a problem in cases in which the FDIC, on an emergency basis, seeks to issue a temporary suspension order against a national bank, member bank, or savings association, when the required Notification to the appropriate federal banking agency has not yet been provided, or the thirty days have not yet elapsed. The necessity of waiting a possible maximum of thirty days for notification and correction, before the FDIC can commence termination of insurance proceedings, negates the effectiveness of an immediate suspension order, and greatly increases the chances that such an order will be set aside by a reviewing court. The suggested resolution is to allow the FDIC to issue a temporary suspension order at the same time it provides notification to the Primary Regulator. Thus, we suggest that the words "after giving the notice required under subparagraph (A) with respect to an insured depository institution" which appear in the first sentence of section

8(a)(8) of the Act be deleted. The FDIC has not interpreted the thirty-day notice requirement to apply where the FDIC is the appropriate Federal banking agency. We do not believe that Congress intended the thirty-day notice requirement to apply to any circumstance requiring immediate suspension of deposit insurance.

Additional Amendments to Enforcement Powers

We ask that a new amendment be enacted, prohibiting the advancement of defense costs and the payment, directly or indirectly, by an institution of attorney's fees and civil money penalties for an institution-affiliated party against whom the FDIC has brought an administrative enforcement action, and pre-payment of salaries or other expenses in anticipation of failure of the institution. This does not preclude recovery through the Equal Access to Justice Act by Respondents who prevail against the agency in an administrative enforcement action.

12 U.S.C. § 1818(k), prior to amendment by FIRREA, provided a definition for what constituted "order which has become final." It would be useful to reinstate this definition. The definition is necessary, insofar as numerous references are made throughout section 8 of the Act to "any order which has become final".

Finally, the provisions dealing with liability of commonly-controlled insured depository institutions are addressed in title II of FIRREA. Because these provisions have caused problems from an enforcement perspective, we have also addressed them above in our response regarding Title IX of FIRREA.

Before FIRREA, holding companies could effectively transfer their system-wide losses to the FDIC by concentrating the losses in one or two banks, and then allowing those banks to fail. The "cross-guaranty" rule was supposed to enable the FDIC to reach the good assets that belonged to the holding company system, without regard for where the holding company moved them. The protection is inadequate, however. There are procedural problems related to the timing of the enforcement procedures. As a result, holding companies may be able to protect themselves against cross-guaranties by selling off healthy institutions prior to the failure of an affiliate and retaining the proceeds at the holding-company level.

We propose that when a depository institution in a holding company system is failing, the FDIC should be able to invoke the cross-guarantee rules against all the depository institutions belonging to a holding company by serving notice on the holding company that the default by one of its affiliated institutions is "reasonably imminent." After that date, any proceeds that the holding company might receive as a result of disposing of an insured affiliate should be subject to FDIC recovery regardless of where held, and any institution sold should itself remain

liable under the cross-guaranty. Also, if the failing institution is disposed of by the holding company prior to its failure, the company's other depository institution subsidiaries should remain liable under the cross-guaranty.

E. <u>Criminal enforcement efforts:</u>

1. Discuss the adequacy of Justice Department investigative and prosecutorial resources and efforts; and identify any areas in the country where the FDIC has encountered delays within the Justice Department or other problems, and, in so doing, indicate whether or not the Attorney General's 12/7/89 allocation to these specific areas will be satisfactory.

<u>Response</u>:

By their nature the investigation and prosecution of bank fraud cases are extremely resource intensive. Prior to the passage of FIRREA, the Department of Justice's Criminal Division and the 94 U.S. Attorney's Offices had much more limited resources with which to attempt to deal with the rapidly escalating problem of fraud in banks and thrifts. However, no statistical data concerning problems with delays or other problems with prosecution is maintained by the FDIC. We have, however, attempted to obtain anecdotal information pertaining to delays or other problems from FDIC's regional and consolidated offices. We have found that the resources of the Department of Justice are stretched thin in some areas, most notably, Dallas, Texas, Houston, Texas, Kansas, the western part of Missouri, and the Central District of California. The few specific instances of "problems" identified by our offices usually involved a basic lack of communication and a lack of clear guidelines as to document production procedures, which are being addressed currently through the local working groups with assistance from Washington as needed.

Other problems noted involved overly broad document production requests by the U.S. Attorneys and the frequency of court appearances required of FDIC employees without sufficient advance notice. These problems are being partially resolved by improved communication between the U.S. Attorney's Offices and the FDIC on a local level.

The most problems with delays were noted in our New York region. They noted a lack of coordination of efforts in several instances. However, they have resolved most of these problems through improved communications, standardized procedures and the local bank fraud working groups.

The Dallas region attributed delays to the financially complicated cases and the priorities being placed on high-dollar and high-profile cases. A lack of resources adequate to deal with the large number of depository institutions where fraud has been uncovered was the primary problem.

At one joint inter-agency meeting in Oklahoma the U.S. Attorney disclosed that the primary problem encountered in achieving timely and successful prosecution of criminal bank fraud offenders was the lack of "experienced" attorneys familiar with the intricacies of bank transactions within the U.S. Attorney's Office. The U.S. Attorney proposed the special appointment of FDIC attorneys, as Special Assistant U.S. Attorneys, to actively assist in the prosecution of offenses relating to financial institutions. The FDIC will consider requests for attorney assistance of this nature in specific matters.

We are also aware that in the past there has been a substantial backlog of criminal referrals in the Central District of California which was attributable to the limited resources of the FBI and U.S. Attorney's Office. However, we note that there have been several recent cases tried with excellent results. In addition, the organization of a local working group has created a cooperative atmosphere among the Department of Justice and the regulatory agencies.

The Attorney General's December, 1989 allocation of prosecutorial and investigative resources to areas where a need has been identified will certainly help decrease delays and relieve the over-worked staffs, such as in the Central District of California. However, it is too early to assess the efficacy of the locational assignments and the sufficiency of the numbers allocated. In addition, it is also premature for us to assess whether the annual $50 million three-year appropriation will be adequate to deal with a fraud problem of the magnitude of that in the banking and thrift industries. We are hopeful that the Attorney General will complete the hiring and training of these new prosecutors and investigators quickly so that these new resources can be swiftly brought to bear.

This Committee should also be aware of the important role that the FDIC and other banking agencies are playing in the detection and prosecution of bank fraud. We have identified some areas in which the utilization of FDIC personnel has been and will continue to be essential to successful prosecutions:

1. The early detection and communication of possible bank fraud to the Department of Justice.

2. The rapid response to initial inquiries by investigators

and prosecutors concerning criminal referrals, the institution and individuals involved, and the relevant transactions;

3. The identification of important documents and witnesses to facilitate grand jury investigations and the production requested documents from institution and agency files;

4. The availability of agency experts and expertise to assist investigators' and prosecutors' understanding of the records and transactions involved;

5. The availability of agency personnel as witnesses at trial;

6. The participation in local fraud working groups; and

7. Cooperation with U.S. Attorney's Offices and probation departments to obtain restitution orders and substantial periods of incarceration for those convicted of bank fraud.

These are some of the important contributions made by the FDIC to support the prosecution of bank fraud.

2. List (in an appendix) each local law enforcement (bank fraud) task force/working group, and identify for each the FDIC's representative(s).

See Appendix E-2 for this listing.

3. (a) Please evaluate the operations of the Bank Fraud Working Group and discuss any improvements to its structure or operations. (b) Has the Working Group discussed and taken any specific actions to implement recommendation no. 29 in the committee's report?

Response:

(a) See Appendix E-3-a for an outline of accomplishments of the Interagency Bank Fraud Enforcement Working Group compiled jointly by the Federal Reserve Board, Office of Thrift Supervision, Office of the Comptroller of Currency, Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and the Fraud Section, Criminal Division, Department of Justice.

(b) No formal action has been taken by the Working Group to implement recommendation no. 29. However, the regulatory agencies do share information as to individuals and types of schemes encountered by our examination teams or investigators. This information is discussed at the group's meetings so that the other regulatory agencies can alert their field organizations concerning such individuals or schemes. In addition, the FDIC has created the Criminal Restitution Unit within the Legal Division to coordinate the collection and dissemination of information related to fraud schemes, fraudulent transactions and individuals suspected of involvement in such schemes in banks and thrifts under the supervision of the FDIC.

4. (a) Report on the FDIC's successes and failures in obtaining both the U.S. Attorneys' cooperation in requesting, and also the courts' cooperation in imposing, restitution, civil money penalties, and removals from SNM banks at time of sentencing in criminal cases, including identifying, if possible, those districts where the FDIC has not been successful; and (b) provide any overall figures on the amount of such restitution.

Response:

a. Nearly all FDIC offices reported specific instances of positive results due to the coordinated inter-agency efforts. The following are examples:

Oklahoma City:

The restitution order and settlement agreement reached with Charles Bazarian and his business operation, CB Financial Company, payable to the FDIC in the sum of $24MM, is an example of a cooperative effort on the part of the FDIC, the FBI and prosecutorial agencies to resolve the massive bank fraud committed by this individual and his company. The circumstances involved multi-district bank fraud violations and the assistance of law enforcement agencies in Florida, Oklahoma, and California.

Kansas City:

The Regional Office is pushing for restitution in all appropriate cases. As a result, the FDIC was recently awarded restitution in the amount of $2 million from William A. Deam who was convicted in the U.S. District Court for the District of South Dakota, of bank fraud and making false statements. Likewise, Craig Kronholm has been ordered to pay restitution to Boundary Waters State Bank, Ely, Minnesota and the Veranth Estate in the maximum amount permitted.

New York:

There have been many instances where the New York Consolidated Office has successfully worked in conjunction with the U.S. Attorney to achieve positive results.

Most notable was the joint involvement by the FDIC and U.S. Attorney in the prosecution of certain officers of Golden Pacific National Bank ("GPNB"). The closing of GPNB on June 21, 1985 was due in large part to the activities of its Chairman and President, Kuang Hsung J. Chuang and Vice President, Theresa Shieh.

The New York Consolidated Office cooperated over a two-year period with the U.S. Attorney in its investigation into the activities of Chuang and Shieh. The voluminous documentary evidence produced by the FDIC was crucial to the lengthy investigation and trial, which culminated in the convictions of Chuang and Shieh on January 18, 1989. In addition, the U.S. Attorney was extremely cooperative in asserting the FDIC's restitution claim against GPNB's former officers.

Another example of joint efforts producing positive results was in the matter of Jacobo Finkielstain, the majority shareholder (99%) of Central National Bank of New York ("Central"). Central was declared insolvent on September 11, 1987, and Finkielstain was subsequently indicted for the fraudulent schemes which led to the bank's collapse. The FDIC provided numerous documents to the U.S. Attorney to assist him. Finkielstain ultimately pled guilty on August 17, 1989. With the U.S. Attorney's support and cooperation, the FDIC successfully sought restitution against Finkielstain. On December 8, 1989, the FDIC was awarded restitution in the amount of $34,725,000.00.

(b) We have collected the following data concerning restitution orders resulting from criminal convictions:

FDIC INSURED INSTITUTIONS - CRIMINAL RESTITUTION

1987	1988	1989	1990 to date
--	$ 983,095 4 persons	$14,960,741 2 persons	$ 5,436,258 7 persons

FOUR YEAR TOTAL: $21,380,094 involving 13 persons

FSLIC INSURED INSTITUTIONS - CRIMINAL RESTITUTION

1987	1988	1989	1990 to date
$27,046,755 28 persons	$81,119,632 81 persons	$100,070,645 69 persons	$17,508,322 8 persons

FOUR YEAR TOTALS: $225,745,354 involving 186 persons

F. Information exchanges

1. In its January 18, 1989, letter the FDIC responded to the recommendations in the committee's 1988 report. Several of those responses dealt with the report's recommendations to improve information sharing between agency fee counsel and law enforcement authorities the subject of Recommendations 22.a-d.:

a. To comply with this recommendation, the FHLBB had implemented the following policy: (i) it has directed fee counsel employed by the FSLIC that the criminal prosecution should take precedence over the civil recovery actions, (ii) it had prohibited them from entering into any agreements concerning transmittal of information to the Justice Department, and (iii) it had incorporated in the standard contract between the FSLIC and fee counsel an obligation on the counsel to make referrals based on facts discovered by fee counsel. Questions: (i) Is this policy and contractual provision still in effect with regard to insolvent thrifts now under the FDIC's jurisdiction or has it been changed to conform to the FDIC's policy existing in early 1989? If it has been changed, why? (ii) Has the FDIC changed its policy with regard to insolvent banks, to follow the FHLBB's policy? If not, why not? Please explain.

Response:

The FDIC has not adopted the FHLBB's policy or contractual arrangement with outside fee counsel. The FHLBB's policy was created to recognize the centralized organizational structure of the Bank Board. The FDIC, on the other hand, utilizes a regional organizational structure in which each region is highly autonomous. In addition, the FDIC does not use outside fee counsel to investigate failed institutions. Rather, the FDIC has in each region a cadre of trained investigators that review transactions that may involve criminal conduct or other abuse by insiders and others. These investigators make criminal referrals directly or through their regional office. Accordingly, the majority of criminal referrals are made by FDIC employees rather than outside fee counsel. We continue to believe that this system is efficient and effective and allows the FDIC to better insure that referrals receive proper attention from the agency. While the FDIC has not adopted the FHLBB's policy in its contracts with fee counsel, it has issued a Guide for Legal Representation which provides directives to fee counsel concerning the referral of criminal misconduct to the U.S. Attorney's Offices. These directives include a reference to the FDIC's longstanding policy of promptly notifying and assisting law enforcement officials in investigating conduct which may constitute a violation of criminal statutes.

b. What has the Bank Fraud Working Group done in the way of discussing or implementing any of these recommendations, including developing "pre-referral process" (as referenced on pp. 10 & 11 of the FDIC's letter)?

Response:

The FDIC has not adopted a formal "pre-referral" process. The FDIC encourages immediate informal contact with criminal law enforcement authorities by its employees whenever fraud or other possible criminal conduct is discovered. This contact is typically made through a bank examiner, or the Regional Office's criminal fraud liaison, whenever any situation is encountered that could involve fraud on an operating, insured institution.

Similarly, personnel involved in failed institutions are encouraged to make the same informal contact with appropriate criminal law enforcement authorities whenever a situation is encountered involving fraud by insiders or former customers that requires immediate attention. When the fraud involves the failed institution as well as an operating institution, immediate attention is usually warranted, and informal contact is made to alert the authorities.

In most cases, the informal contact is made in the form of a telephone call to an FBI agent or assistant U.S. attorney designated as the bank or savings and loan fraud contact.

c. To the extent not described in the FDIC's response to a. and b., what specific steps has the FDIC taken to implement each of these recommendations in No. 22?

Response:

The FDIC has recognized a need to foster better coordination and communication regarding criminal matters. The FDIC has therefore created the Conflicts and Criminal Restitution Section (CCRS) within its Legal Division. The CCRS is dedicated to:

1. Promoting the making of more timely and thorough criminal referrals;

2. Coordinating the assistance of FDIC personnel in the grand jury investigation and trial;

3. Providing the assistance to assistant U.S. attorneys in proving damages for restitution;

4. Tracing assets and collecting restitution orders;

5. Investigating complex fraud matters; and

6. Reviewing matters in which one or more culpable individuals are implicated in misconduct against two or more insolvent institutions, a/k/a, a "daisy chain".

The following is a list of some of the projects initiated by the FDIC-CCRS:

1. Worked closely with the U.S. Attorney in San Francisco to obtain contempt convictions and revocation of a probation against Jay and Leif Soderling - former directors and shareholders of Golden Pacific Savings Association. The Court found that the Soderlings went on a $500,000 "spending spree" rather than make payment on the outstanding restitution order. As a result, the court ordered the Soderlings to serve the 6-1/2 years remaining on their sentences and increased the restitution amount to $6.7 million. Over $1.9 million has been collected and an additional $1 million in other assets has been frozen (Appendix F-1-c, No.1).

2. Revitalization of the Miami, Florida local fraud working group: We gathered representatives from the FDIC, OTS, Federal

Reserve, OCC, FBI, U.S. Attorney's Office for the S.D. of Florida, and the State of Florida Banking Dept., and have continued to chair meetings focusing on individual cases and developing better cooperation and communication in the south Florida area;

3. Provided assistance to the Solicitor General on the Davenport brief filed in the Supreme Court (dealing with the dischargeability of restitution orders under Chapter 13 of the Bankruptcy Code). We are also assisting in the Hughey case involving a restitution issue that is being heard by the Supreme Court this Spring (Appendix F-1-c, No. 2);

4. Orchestrated meetings regarding three thrifts that have been put into the RTC Program (CenTrust/Miami, Fla., General Bank/Miami, Fla., Red Hill/Red Hill, Pa.) with the FBI, Federal Prosecutors, fee counsel, and the staff of primary regulatory agencies to discuss ongoing criminal investigations, the possibility of any criminal misconduct, and the methodology to uncover possible violations, the steps to preserve and document the location of evidence, the staffing of the investigations by agency personnel, the identification of witnesses who are crucial to criminal and civil investigations and making such witnesses available to the respective agencies, and continued coordination of civil and criminal investigations to ensure success and to avoid conflicts;

5. Worked with fee counsel, FDIC and OTS personnel, probation officers and Federal Prosecutors in proving damages suffered by banks and thrifts through the drafting of restitution letters, affidavits, memorandums, and in providing witnesses at restitution hearings. These efforts have resulted in defendants being sentenced to longer terms of imprisonment (Ramona; 12 and 15 years for the two defendants) and the adoption of restitution orders (i.e., Smith: $12 million) (Appendix F-1-c, No.3); and

6. Coordinated with the FBI to obtain records sought by grand jury subpoena that were located with fee counsel and primary regulators.

2. Does the FDIC still have a consumer toll-free hotline? If so, how does it work? How is it publicized? How many instances of alleged fraud, abuse, misconduct were reported in 1989? And what was the outcome of those reports?

Response:

Yes. The FDIC's Office of Consumer Affairs (OCA) has had such a hotline for at least ten years. The Consumer Telephone Hotline allows the public to ask questions or present views and

complaints about consumer protection or civil rights matters involving FDIC-supervised institutions. The toll-free number is (800) 424-5488. This phone line is manned from 9:00 a.m. to 4:00 p.m. Monday through Friday, by at least two employees full time, with assistance by numerous specialists. This usually results in at least four individuals answering calls at all times, with access to additional personnel when necessary. Additionally, the toll-free number also reaches a telecommunication device for the deaf (TDD) and the device can be reached in the Washington area by calling (202) 898-3537. The toll-free number and a brief description of the service is published in all pamphlets issued by the U.S. government concerning consumer protection - for instance, the U.S. Office of Consumer Affairs publishes a "Consumers' Resource Handbook" and the FDIC's number is contained therein. Periodic press releases contain the number and describe the consumer hotline. Parties on FDIC's Office of Consumer Affairs mailing list are alerted in writing to the existence of the hotline. RTC provides this number to the public during various financial institution closings that it attends, and also includes this number in some publications that it circulates. During speeches at conferences throughout the country, FDIC officials will advise attendees of the existence of the toll-free hotline.

In 1989 OCA received 13,393 calls on the telephone hotline. The major areas of concern were: insurance coverage protection, general banking information, Fair Housing and the Home Mortgage Disclosure Act. None of OCA's calls in 1989 appeared to pertain to alleged fraud or misconduct. If OCA receives such a complaint, it would be referred to the appropriate office, such as the Division of Supervision's Special Activities Section or the Securities Registration and Disclosure Section. In some situations, the referral might be made to the FDIC's Regional Offices. OCA does not formally track the outcome of such referrals.

3. Discuss any other problems with, and suggest improvements in, the exchanges of information (a) between and among the Federal banking agencies and (b) between the FDIC and Justice Department.

<u>Response</u>:

We believe that major improvements have been made in the exchange of information among the regulatory agencies and the Department of Justice. However, we are aware that more improvement could be achieved. Among the improvements that we believe would be helpful are:

1. Legislative initiatives to make clear that information production to the Department of Justice by the regulatory agencies pursuant to a grand jury subpoena or other formal request in a criminal investigation does not waive or result in the waiver of any privileges that may attach to such information in the possession of the agencies.

2. More and better sharing of information by the Department of Justice pertaining to the status of investigations resulting from agency criminal referrals.

3. Increased authority for sharing of information gathered by the Department of Justice in the course of criminal investigations to agencies for use in connection with administrative or civil enforcement and asset recovery matters.