# Donald L Kohn: Regulatory relief

Testimony of Mr Donald L Kohn, Member of the Board of Governors of the US Federal Reserve System, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, US House of Representatives, Washington DC, 9 June 2005.

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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on issues related to regulatory relief. The Board strongly supports the efforts of Congress to review periodically the federal banking laws to determine whether they can be streamlined without compromising the safety and soundness of banking organizations, consumer protections, or other important objectives that Congress has established for the financial system. In 2003, at Chairman Oxley's request, the Board provided the Committee with a number of legislative proposals that we believe are consistent with this goal, and the Board recently agreed to support several additional regulatory relief proposals. A summary of the proposals supported by the Board is included in the appendix to my testimony. In my remarks, I will highlight those that would provide the most meaningful regulatory relief.

For its part, the Board strives to review each of our regulations at least once every five years to identify those provisions that are out of date or otherwise unnecessary. The Board also has been an active participant in the ongoing regulatory review process being conducted by the federal banking agencies pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). EGRPRA requires the federal banking agencies, at least once every ten years, to review and seek public comment on the burden associated with the full range of the agencies' regulations that affect insured depository institutions. The Board and the other banking agencies are in the midst of the first ten-year review cycle, and I am pleased to report that we are on track to complete this process by the 2006 deadline. The agencies already have solicited comments on five broad categories of regulations - including those governing applications, activities, money laundering, and consumer protection in lending transactions - and have conducted outreach meetings throughout the country to encourage public participation in the EGRPRA process. In response to these efforts, the agencies have received comments from more than 1,000 entities and individuals on ways to reduce the regulatory burden on banking organizations. The Board will consider and incorporate the comments relevant to our regulations as we move forward with our own regulation review efforts.

While the banking agencies can achieve some burden reductions through administrative action, Congress plays a critical role in the regulatory relief process. Many proposals to reduce regulatory burden require congressional action to implement. Moreover, the Congress has ultimate responsibility for establishing the overall regulatory framework for banking organizations, and through its actions Congress can ensure that regulatory relief is consistent with the framework it has established to maintain the safety and soundness of banking organizations and promote other important public policy goals.

## Interest on reserves, reserve requirements and interest on demand deposits

I am pleased to note that some of the Board's most important regulatory relief suggestions - including those authorizing the Federal Reserve to pay interest on balances held by depository institutions at Reserve Banks, enhancing the Board's flexibility to set reserve requirements, and permitting depository institutions to pay interest on demand deposits - recently were passed by the House as part of H.R. 1224, the Business Checking Freedom Act of 2005. Let me briefly explain why the Board supports passage of these amendments, either in a stand-alone bill or as part of a broader regulatory relief bill. I will also discuss a little later why the Board does not support those aspects of H.R. 1224 that would, for the first time, authorize industrial loan companies that operate outside the supervisory framework established for other insured banks to offer interest-bearing transaction accounts to business customers.

For the purpose of implementing monetary policy, the Board is obliged by law to establish reserve requirements on certain deposits held at depository institutions. Because the Federal Reserve does not pay interest on the balances held at Reserve Banks to meet reserve requirements, depositories have an incentive to reduce their reserve balances to a minimum. To do so, they engage in a variety of reserve avoidance activities, including sweep arrangements that move funds from deposits that are subject to reserve requirements to deposits and money market investments that are not. These sweep programs and similar activities absorb real resources and therefore diminish the efficiency of our banking system. H.R. 1224 would allow the Federal Reserve to pay depository institutions interest on their required reserve balances, which would remove a substantial portion of the incentive for depositories to engage in reserve avoidance measures. The resulting improvements in efficiency should eventually be passed through to bank borrowers and depositors.

Besides required reserve balances, depository institutions also voluntarily hold two other types of balances in their Reserve Bank accounts - contractual clearing balances and excess reserve balances. H.R. 1224 would authorize the Federal Reserve to pay explicit interest on these balances as well. This authority would enhance the Federal Reserve's toolkit for efficiently conducting monetary policy.

In order for the Federal Open Market Committee (FOMC) to conduct monetary policy effectively, it is important that a sufficient and predictable demand for balances at the Reserve Banks exist so that the System knows the volume of reserves to supply (or remove) through open market operations to achieve the FOMC's target federal funds rate. Authorizing the Federal Reserve to pay explicit interest on contractual clearing balances and excess reserve balances, in addition to required reserve balances, could potentially provide a demand for voluntary balances that would be stable enough for monetary policy to be implemented effectively through existing procedures without the need for required reserve balances. In these circumstances, the Board could consider using the authority granted in H.R. 1224 to reduce - or even eliminate - reserve requirements, thereby reducing a regulatory burden for all depository institutions, without adversely affecting the Federal Reserve's ability to conduct monetary policy.

Having the authority to pay interest on excess reserves also could help mitigate potential volatility in overnight interest rates. If the Federal Reserve was authorized to pay interest on excess reserves, and did so, the rate paid would act as a minimum for overnight interest rates, because banks would not generally lend to other banks at a lower rate than they could earn by keeping their excess funds at a Reserve Bank. Although the Board sees no need to pay interest on excess reserves in the near future, and any movement in this direction would need further study, the ability to do so would be a potentially useful addition to the monetary toolkit of the Federal Reserve.

The Board also strongly supports the provisions of H.R. 1224 that would repeal the statutory restrictions that currently prohibit depository institutions from paying interest on demand deposits. Repealing the prohibition of interest on demand deposits would improve the overall efficiency of our financial sector and, in particular, should assist small banks in attracting and retaining business deposits. To compete for the liquid assets of businesses, banks have been compelled to set up complicated procedures to pay implicit interest on compensating balance accounts and they spend resources - and charge fees - for sweeping the excess demand deposits of businesses into money market investments on a nightly basis. Small banks, however, often do not have the resources to develop the sweep or other programs that are needed to compete for the deposits of business customers. Moreover, from the standpoint of the overall economy, the expenses incurred by institutions of all sizes to implement these programs are a waste of resources and would be unnecessary if institutions were permitted to pay interest on demand deposits directly.

The costs incurred by banks in operating these programs are passed on, directly or indirectly, to their large and small business customers. Authorizing banks to pay interest on demand deposits would eliminate the need for these customers to pay for more costly sweep and compensating balance arrangements to earn a return on their demand deposits.

H.R. 1224 contains a provision that is intended to address the potential federal budgetary impact of this proposal by requiring the Reserve Banks to transfer some of their capital surplus to the Treasury to cover the budgetary costs of paying interest on required reserves through 2009. As the Board has consistently pointed out, these transfers would not provide any true offsets to budgetary costs. Although these transfers would allow the Treasury to issue fewer securities, the Federal Reserve would need to lower its holdings of Treasury securities by the same amount to make the required transfers. Thus, the level of Treasury debt held by the public sector would be unchanged, and the Treasury's interest payments, net of receipts from the Federal Reserve, would be unaffected.

### De novo interstate branching

The Board has proposed an amendment that would remove outdated barriers to de novo interstate branching by banks. Since enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act), all fifty states have permitted banks to expand on an interstate basis through the acquisition of an existing bank in their state. Interstate banking is not only good for banks, it is good for consumers and the economy. While the number of banks has fallen in recent years, the number of branches has risen sharply to more than 71,000 in 2004 compared with approximately 50,000 in 1990. More than 2,000 branches were opened by banks in 2004 alone. The creation of new branches helps maintain the competitiveness and dynamism of the American banking industry and improve access to banking services in otherwise under-served markets. It results in better banking services for households and small businesses, lower interest rates on loans, and higher interest rates on deposits. Interstate branching also increases convenience for customers who live, work, and operate across state borders.

However, the Riegle-Neal Act permitted banks to open a branch in a new state without acquiring another bank only if the host state enacted legislation that expressly permits entry by de novo branching (an opt-in requirement). To date, twenty-one states and the District of Columbia have enacted some form of opt-in legislation, while twenty-nine states continue to require interstate entry through the acquisition of an existing bank.

This limitation on de novo branching is an obstacle to interstate entry for all banks and also creates special problems for small banks seeking to operate across state lines. Moreover, it creates an unlevel playing field between banks and federal savings associations, which have long been allowed to establish de novo branches on an interstate basis.

The Board’s proposed amendment would remove this last obstacle to full interstate branching for banks and level the playing field between banks and thrifts. The amendment also would remove the parallel provision that allows states to impose a minimum requirement on the age of banks that are acquired by an out-of-state banking organization. These changes would allow banks, including in particular small banks near state borders, to better serve their customers by establishing new interstate branches and acquiring newly chartered banks across state lines. It also would increase competition by providing banks a less costly method for offering their services at new locations. The establishment and operation of any new interstate branches would continue to be subject to the other regulatory provisions and conditions established by Congress for de novo interstate branches, including the financial, managerial, and community reinvestment requirements set forth in the Riegle-Neal Act.

### Small bank examination flexibility

Another amendment that the Board has supported would expand the number of small institutions that qualify for an extended examination cycle. Federal law currently mandates that the appropriate federal banking agency conduct an on-site examination of each insured depository institution at least once every twelve months. The statute, however, permits institutions that have $250 million or less in assets and that meet certain capital, managerial, and other criteria to be examined on an eighteen-month cycle. As the primary federal supervisors for state-chartered banks, the Board and Federal Deposit Insurance Corporation (FDIC) may alternate responsibility for conducting these examinations with the appropriate state supervisory authority if the Board or FDIC determines that the state examination carries out the purposes of the statute.

The $250 million asset cutoff for an eighteen-month examination cycle has not been raised since 1994. The Board’s proposed amendment would raise this asset cap from $250 million to $500 million, thus potentially allowing approximately an additional 1,100 insured depository institutions to qualify for an eighteen-month examination cycle.

The proposed amendment would provide meaningful relief to small institutions without jeopardizing the safety and soundness of insured depository institutions. Under the proposed amendment, an institution with less than $500 million in assets would qualify for the eighteen-month examination cycle only if the institution was well capitalized, well managed, and met the other criteria established by Congress in Federal Deposit Insurance Corporation Improvement Act of 1991. The amendment also would continue to require that all insured depository institutions undergo a full-scope, on-site examination at least once every twelve or eighteen months. Importantly, the agencies would continue to have the ability to examine any institution more frequently and at any time if the agency determines an examination is necessary or appropriate. Despite advances in off-site monitoring, the Board continues to believe that regular on-site examinations play a critical role in helping bank supervisors detect and correct asset, risk-management or internal control problems at an institution before these problems result in claims on the deposit insurance funds.

### Permit the Board to grant exceptions to attribution rule

The Board has proposed another amendment that we believe will help banking organizations maintain attractive benefits programs for their employees. The Bank Holding Company Act (BHC Act) generally prohibits a bank holding company from owning, in the aggregate, more than 5 percent of the voting shares of any company without the Board's approval. The BHC Act also provides that any shares held by a trust for the benefit of a bank holding company's shareholders or employees are deemed to be controlled by the bank holding company itself. This attribution rule was intended to prevent a bank holding company from using a trust established for the benefit of its management, shareholders, or employees to evade the BHC Act's restrictions on the acquisition of shares of banks and nonbanking companies.

While this attribution rule has proved to be a useful tool in preventing evasions of the BHC Act, it does not always provide an appropriate result. For example, it may not be appropriate to apply the attribution rule when the shares in question are acquired by a 401(k) plan that is widely held by, and operated for the benefit of, the employees of the bank holding company. In these situations, the bank holding company may not have the ability to influence the purchase or sale decisions of the employees or otherwise control the shares that are held by the plan in trust for its employees. The suggested amendment would allow the Board to address these situations by authorizing the Board to grant exceptions from the attribution rule where appropriate.

### Reduce cross-marketing restrictions

Another amendment proposed by the Board would modify the cross-marketing restrictions imposed by the Gramm-Leach-Bliley Act (GLB Act) on the merchant banking and insurance company investments of financial holding companies. The GLB Act generally prohibits a depository institution controlled by a financial holding company from engaging in cross-marketing activities with a nonfinancial company that is owned by the same financial holding company under the GLB Act's merchant banking or insurance company investment authorities. However, the GLB Act currently permits a depository institution subsidiary of a financial holding company, with Board approval, to engage in limited cross-marketing activities through statement stuffers and Internet websites with nonfinancial companies that are held under the act's insurance company investment authority (but not the act's merchant banking authority).

The Board's proposed amendment would allow depository institutions controlled by a financial holding company to engage in cross-marketing activities with companies held under the merchant banking authority to the same extent, and subject to the same restrictions, as companies held under the insurance company investment authority. We believe that this parity of treatment is appropriate, and see no reason to treat the merchant banking and insurance investments of financial holding companies differently for purposes of the cross-marketing restrictions of the GLB Act.

A second aspect of the amendment would liberalize the cross-marketing restrictions that apply to both merchant banking and insurance company investments. This aspect of the amendment would permit a depository institution subsidiary of a financial holding company to engage in cross-marketing activities with a nonfinancial company held under either the merchant banking or insurance company investment authority if the nonfinancial company is not controlled by the financial holding company. When a financial holding company does not control a portfolio company, cross-marketing activities are unlikely to materially undermine the separation between the nonfinancial portfolio company and the financial holding company's depository institution subsidiaries.

### Industrial loan companies

As I noted earlier, the Board strongly supports allowing depository institutions to pay interest on demand deposits and allowing banks to branch de novo across state lines. The Board, however, opposes proposals that would allow industrial loan companies (ILCs) to offer business NOW accounts, as H.R. 1224 does, or open de novo branches nationwide if the corporate owner of the ILC takes advantage of the special exemption in current law that allows the owner to operate outside the prudential framework that Congress has established for the corporate owners of other types of insured banks.

ILCs are state-chartered FDIC-insured banks that were first established early in the twentieth century to make small loans to industrial workers. As insured banks, ILCs are supervised by the FDIC as well as by the chartering state. However, under a special exemption in current law, any type of company, including a commercial or retail firm, may acquire an ILC in a handful of states - principally Utah, California, and Nevada - and avoid the activity restrictions and supervisory requirements imposed on bank holding companies under the federal BHC Act.

When the special exemption for ILCs was initially granted in 1987, ILCs were mostly small, local institutions that did not offer demand deposits or other types of checking accounts. In light of these facts, Congress conditioned the exemption on a requirement that any ILCs chartered after 1987 remain small (below $100 million in assets) or refrain from offering demand deposits that are withdrawable by check or similar means.

This special exemption has been aggressively exploited since 1987. Some grandfathered states have allowed their ILCs to exercise many of the same powers as commercial banks and have begun to charter new ILCs. Today, several ILCs are owned by large, internationally active financial or commercial firms. In addition, a number of ILCs themselves have grown large, with one holding more than $50 billion in deposits and an additional eight holding more than $1 billion in deposits.

Affirmatively granting ILCs the ability to offer business NOW accounts and open de novo branches across state lines would permit ILCs to become the functional equivalent of full-service insured banks and operate across the United States. This result would be inconsistent with both the historical functions of ILCs and the terms of their special exemption in current law.

Because the parent companies of exempt ILCs are not subject to the BHC Act, authorizing ILCs to operate essentially as full-service banks would create an unlevel competitive playing field among banking organizations and undermine the framework Congress has established for the corporate owners of full-service banks. It would allow firms that are not subject to the consolidated supervisory framework of the BHC Act - including consolidated capital, examination, and reporting requirements - to own and control the functional equivalent of a full-service bank. It also would allow a foreign bank to acquire control of the equivalent of a full-service insured bank without meeting the requirement under the BHC Act that the foreign bank be subject to comprehensive supervision on a consolidated basis in its home country. In addition, it would allow financial firms to acquire the equivalent of a full-service bank without complying with the capital, managerial, and Community Reinvestment Act (CRA) requirements established by Congress in the GLB Act.

Congress has established consolidated supervision as a fundamental component of bank supervision in the United States because consolidated supervision provides important protection to the insured banks that are part of a larger organization and to the federal safety net that supports those banks. Financial trouble in one part of an organization can spread rapidly to other parts. To protect an insured bank that is part of a larger organization, a supervisor needs to have the authority and tools to understand the risks that exist within the parent organization and its affiliates and, if necessary, address any significant capital, managerial, or other deficiencies before they pose a danger to the bank. This is particularly true today, as holding companies increasingly manage their operations - and the risks that arise from these operations - in a centralized manner that cuts across legal entities. Risks that cross legal entities and that are managed on a consolidated basis simply cannot be monitored properly through supervision directed at one, or even several, of the legal entities within the overall organization. For these reasons, Congress since 1956 has required that the parent companies of full-service insured banks be subject to consolidated supervision under the BHC Act. In addition, following the collapse of Bank of Commerce and Credit International (BCCI), Congress has required that foreign banks seeking to acquire control of a U.S. bank under the BHC Act be subject to comprehensive supervision on a consolidated basis in the foreign bank’s home country.

Authorizing exempt ILCs to operate as essentially full-service banks also would undermine the framework that Congress has established - and recently reaffirmed in the GLB Act - to limit the affiliation of banks and commercial entities. This is because any type of company, including a commercial firm, may own an exempt ILC without regard to the activity restrictions in the BHC Act that are designed to maintain the separation of banking and commerce. While H.R. 1224 attempts to address concerns related to mixing banking and commerce by placing certain limits on the types of

ILCs that could offer business NOW accounts, the limits in H.R. 1224 do not adequately address this issue. For example, H.R. 1224 would allow any ILC that received FDIC insurance before October 1, 2003, or had an application for deposit insurance pending on that date, to offer NOW accounts to business customers so long as the institution does not experience a change in control. Thus, the bill would allow the commercial and retail firms that acquired an ILC before October 1, 2003, to transform the institution into the functional equivalent of a full-service insured bank. The bill also would allow any ILC that was established or acquired *after* October 1, 2003, to offer business NOW accounts so long as the ILC's appropriate state supervisor determined that the companies controlling the ILC derived at least 85 percent of their annual gross revenues from activities that are "financial in nature or incidental to a financial activity."

Importantly, the bill *does* not define these terms by reference to the GLB Act or otherwise establish any standards for a state authority to use in determining what activities are "financial in nature or incidental to a financial activity." Instead, the bill leaves this important determination - which has the potential to undermine the nation's longstanding policy of maintaining the separation of banking and commerce - to the discretion of the ILC's state supervisor. Moreover, unlike the grandfather provisions of the GLB Act on which the ILC provisions of the bill purportedly are based (see 12 U.S.C. § 1843(n)), H.R. 1224 would not require a company that acquires an ILC after October 1, 2003, to divest its non-financial, commercial activities within a specified period of time.

The limits contained in H.R. 1224 also do not address the other risks and issues presented by ILCs. For example, the bill fails to address the supervisory issues associated with allowing domestic firms or foreign banks that are not subject to consolidated supervision to own and control the functional equivalent of a full-service insured bank.

Let me be clear. The Board does not oppose granting ILCs the ability to offer business NOW accounts or open de novo branches if the corporate owners of ILCs engaged in these expanded activities are covered by the same supervisory and regulatory framework that applies to the owners of other full-service insured banks. Stated simply, if ILCs want to benefit from expanded powers and become functionally indistinguishable from other insured banks, then they and their corporate parents should be subject to the same rules that apply to the owners of other full-service insured banks.

The Board believes that important principles governing the structure of the nation's banking system - such as consolidated supervision, the separation of banking and commerce, and the maintenance of a level playing field for all competitors in the financial services marketplace - should not be abandoned without careful consideration by the Congress. In the Board's view, legislation concerning the payment of interest on demand deposits or de novo branching is unlikely to provide an appropriate vehicle for the thorough consideration of the consequences of altering these key principles.

## Conclusion

I appreciate the opportunity to discuss the Board's legislative suggestions and priorities concerning regulatory relief. The Board would be pleased to work with the Subcommittee, the full Committee, and their staffs as you move forward in developing and considering regulatory relief legislation.

# Appendix:<br>Regulatory Relief Proposals Supported by the<br>Board of Governors of the Federal Reserve System[1]

### *1. Authorize the Federal Reserve to pay interest on balances held at Reserve Banks**

Amendment gives the Federal Reserve explicit authority to pay interest on balances held by depository institutions at the Federal Reserve Banks.

[1] Items identified with an asterisk (*) were included in H.R. 1375, the Financial Services Regulatory Relief Act of 2004, as passed by the House of Representatives.

### *2. Grant the Board additional flexibility in establishing reserve requirements**

Amendment provides the Federal Reserve with greater flexibility to set the ratio of reserves that a depository institution must maintain against its transaction accounts below the current ranges established by the Monetary Control Act of 1980.

### *3. Authorize depository institutions to pay interest on demand deposits**

Amendment repeals the provisions in current law that prohibit depository institutions from paying interest on demand deposits. If adopted, the amendment would allow all depository institutions that have the authority to offer demand deposits to pay interest on those deposits.

### *4. Ease restrictions on interstate branching and mergers in a competitively equitable manner*

Amendment affirmatively authorizes national and state banks to open de novo branches on an interstate basis. Currently, banks may establish de novo branches in a new state only if the state has affirmatively authorized de novo branching. This existing limitation places banks at a disadvantage to federal savings associations, which currently have the ability to branch de novo on an interstate basis. The amendment also would remove a parallel provision that allows states to impose a minimum requirement on the age of banks that are acquired by an out-of-state banking organization.

The amendment would not allow industrial loan companies (ILCs) that operate under a special exemption in federal law from opening de novo branches on a nationwide basis. The corporate owners of these ILCs are not subject to the type of consolidated supervision and activities restrictions that generally apply to the corporate owners of other banks insured by the Federal Deposit Insurance Corporation (FDIC). Granting exempt ILCs nationwide branching rights also would be inconsistent with the terms of their special exemption in federal law.

### *5. Small Bank Examination Flexibility*

Amendment would expand the number of small institutions that may qualify for an eighteen-month (rather than a twelve-month) examination cycle. Under current law, an insured depository institution must have $250 million or less in total assets to qualify for an eighteen-month examination cycle. See 12 U.S.C. § 1820(d). The amendment would raise this asset cap to $500 million, thereby potentially allowing approximately an additional 1,100 institutions to qualify for an extended examination cycle.

### *6. Permit the Board to grant exceptions to the attribution rule concerning shares held by a trust for the benefit of a bank holding company or its shareholders or employees**

The amendment would allow the Board, in appropriate circumstances, to waive the attribution rule in section 2(g)(2) of the Bank Holding Company Act (BHC Act). This attribution rule currently provides that, for purposes of the BHC Act, a company is deemed in all circumstances to own or control any shares that are held by a trust (such as an employee benefit plan) for the benefit of the company or its shareholders or employees. The amendment would allow the Board to waive the rule when, for example, the shares in question are held by a 401(k) plan that is widely held by the bank holding company's employees and the bank holding company does not have the ability to control the shares held by the plan.

### *7. Modification of the cross-marketing restrictions applicable to merchant banking and insurance company investments**

Amendment allows the depository institution subsidiaries of a financial holding company to engage in cross-marketing activities with portfolio companies that are held under the merchant banking authority in the Gramm-Leach-Bliley Act (GLB Act) to the same extent as such activities are currently permissible for portfolio companies held under the GLB Act's insurance company investment authority. The amendment also would allow the depository institution subsidiaries of a financial holding company to engage in cross-marketing activities with a portfolio company held under either the merchant banking or insurance company investment authority if the financial holding company does not control the portfolio company.

***8. Allow insured banks to engage in interstate merger transactions with savings associations and trust companies****

The amendment would allow an insured bank to directly acquire, by merger, an insured savings association or uninsured trust company in a different home state without first converting the target savings association or trust company into an insured bank. As under current law, the insured bank would have to be the survivor of the merger.

***9. Authorize member banks to use pass-through reserve accounts****

Amendment permits banks that are members of the Federal Reserve System to count as reserves the deposits in other banks that are "passed through" by those banks to the Federal Reserve as required reserve balances. Nonmember banks already are able to use such pass-through reserve accounts.

***10. Shorten the post-approval waiting period for bank mergers and acquisitions where the relevant banking agency and the Attorney General agree the transaction will not have adverse competitive effects***

Amendment allows the responsible federal banking agency, with the concurrence of the Attorney General, to reduce the post-approval waiting periods under the Bank Merger Act and BHC Act from fifteen days to as few as five days. The amendment would not alter the time period that a private party has to challenge a banking agency's approval of a transaction for reasons related to the Community Reinvestment Act.

***11. Eliminate requirement that the reviewing agency request a competitive factors report from the other banking agencies in Bank Merger Act transactions****

Amendment would eliminate the requirement that the reviewing agency request a competitive factors report from the other banking agencies on Bank Merger Act transactions. The reviewing agency would, however, continue to be required to (i) conduct a competitive analysis of the proposed merger, and (ii) request a competitive factors report from the Attorney General and provide a copy of this request to the FDIC (when the FDIC is not the reviewing agency).

***12. Streamline Bank Merger Act procedural requirements for transactions involving entities that are already under common control***

The amendment eliminates the need for the reviewing agency for a bank merger involving affiliated entities to request a report on the competitive factors associated with the transaction from the other banking agencies and the Attorney General. The amendment also would eliminate the post-approval waiting period for Bank Merger Act transactions involving affiliated entities. The merger of depository institutions that already are under common control typically does not have any impact on competition.

***13. a. Restore Board's authority to determine that new activities are "closely related to banking" and permissible for all bank holding companies***

Amendment would restore the Board's ability to determine that nonbanking activities are "closely related to banking" under section 4(c)(8) of the BHC Act and, thus, permissible for all bank holding companies, including those that have not elected to become financial holding companies. Bank holding companies would still have to become a financial holding company to engage in the types of expanded activities authorized by the GLB Act - including full-scope securities underwriting, insurance underwriting, and merchant banking activities - as well as any new activities that the Board determines are financial in nature or incidental or complementary to financial activities under the GLB Act.

***b. Allow bank holding companies to engage in insurance agency activities (Alternative to Item 13.a.)***

Alternative amendment would allow all bank holding companies, including those that have not elected to become financial holding companies, to act as agent in the sale of insurance. Currently, bank holding companies that do not become a financial holding company may engage only in very limited insurance sales activities (primarily involving credit-related insurance). However, most banks are permitted to sell any type of insurance, either directly or through a subsidiary. The amendment would rectify this imbalance by permitting all bank holding companies to act as agent in the sale of insurance. Insurance agency activities involve less risk than insurance underwriting and other principal activities. Bank holding companies would continue to be required to become a financial holding company to engage in insurance underwriting activities.

### *14. Repeal certain reporting requirements imposed on the insiders of insured depository institutions**

Amendment repeals the provisions of current law that require: (i) an executive officer of a bank to file a report with the bank's board of directors concerning the officer's indebtedness to other banks; (ii) a member bank to file a separate report each quarter concerning any loans made to its executive officers during the quarter; and (iii) executive officers and principal shareholders of a bank to report to the bank's board of directors any loans received from a correspondent bank. The Board has found that these reporting requirements do not contribute significantly to the monitoring of insider lending. These amendments would not alter the statutory limits or conditions imposed on loans by bank to their insiders.

### *15. Provide an adjustment for the small depository institutions exception under the Depository Institution Management Interlocks Act (DIMIA)**

Currently, the DIMIA generally prohibits a management official of one institution from serving as a management official of any other non-affiliated depository institution or depository institution holding company if the institutions or an affiliate of such institutions have offices that are located in the same metropolitan statistical area. The statute provides an exception from this restriction for institutions that have less than $20 million in assets, but this dollar figure has not been updated since 1978. The amendment would increase this amount to $200 million.

### *16. Flood insurance amendments*

These amendments would:

(a) Allow lenders to rely on information from licensed surveyors to determine whether a property is in a flood zone, if the flood map is more than ten years old;

(b) Increase the "small loan" exception to the flood insurance requirements from $5,000 to $20,000 and adjust this amount periodically based on changes in the Consumer Price Index;

(c) Reduce the forty-five-day waiting period required after policy expiration before a lender can "force place" flood insurance by fifteen days to coincide with the thirty-day grace period during which flood insurance coverage continues after policy expiration, which would better enable lenders to avoid gaps in coverage on the relevant collateral; and

(d) Give the federal banking agencies discretion to impose civil money penalties on institutions found to have engaged in a pattern or practice of violating the flood insurance requirements.

### *17. Periodic interagency review of Call Reports*

Amendment requires that the federal banking agencies jointly review the Call Report forms at least once every five years to determine if some of the information required by the reports may be eliminated. The federal banking agencies would retain their current authority to determine what information must be included in the Call Reports filed by the institutions under their primary supervision.

### *18. Ensure protection of confidential information received from foreign supervisory authorities**

Amendment ensures that a federal banking agency may keep confidential information received from a foreign regulatory or supervisory authority if public disclosure of the information would violate the laws of the foreign country, and the banking agency obtained the information in connection with the administration and enforcement of federal banking laws or under a memorandum of understanding between the authority and the agency. The amendment would not authorize an agency to withhold information from Congress or in response to a court order in an action brought by the United States or the agency.

### *19. Restricting the ability of convicted individuals to participate in the affairs of a bank holding company or Edge Act or agreement corporation*

Amendment would prohibit a person convicted of a criminal offense involving dishonesty, breach of trust, or money laundering from participating in the affairs of a bank holding company (other than a foreign bank) or an Edge Act or agreement corporation without the consent of the Board. The amendment also would provide the Board with greater discretion to prevent convicted individuals from participating in the affairs of a nonbank subsidiary of a bank holding company.

### *20. Clarify application of section 8(i) of the Federal Deposit Insurance Act**

Amendment clarifies that a federal banking agency may take enforcement action against a person for conduct that occurred during his or her affiliation with a banking organization even if the person resigns from the organization, regardless of whether the enforcement action is initiated through a notice or an order.