CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to Legislative Secretary

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By Toni Sumalatao
Time 12:06 p.m.
Date 6-3-97

JUN 02 1997

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 141 (COR), "AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306, 106308, AND 106312 OF THE GOVERNMENT CODE (GUAM BANKING LAW), TO REPEAL AND REENACT SECTIONS 106202, 106205, 106216, 106302, AND 106601 OF THE GOVERNMENT CODE (GUAM BANKING LAW) AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE (ARTICLE 3.5) TO CHAPTER 106 OF THE GOVERNMENT CODE (GUAM BANKING LAW)", which was vetoed and subsequently overridden by the Legislature on May 28, 1997. This legislation is now numbered **Public Law No. 24-35.**

Very truly yours,

Carl T. C. Gutierrez
Governor of Guam

Attachment
01254

cc: The Honorable Joanne M. S. Brown
Legislative Secretary

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 6/3/97
Time: 1045
Rec'd by:
Print Name: Charlene Quenga

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 141 (COR), "AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306(a), 106308(a) AND 106312 OF THE GUAM BANKING CODE, TO REPEAL AND RE-ENACT SECTIONS 106202, 106205, 106216(a), 106302 AND 106601 OF THE GUAM BANKING CODE AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE 3.5 TO CHAPTER 106 OF THE GUAM BANKING CODE," returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such consideration, the Legislature did, on the 28th day of May, 1997, agree to pass said bill notwithstanding the objection of the Governor by a vote of fifteen (15) members.

ANTONIO R. UNPINGCO
Speaker

Attested:

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 30th day of May, 1997, at 6:24 o'clock A.M.

Assistant Staff Officer
Governor's Office

Date: _____

Public Law No. 24-35

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

Bill No. 141 (COR)
As substituted on the floor.

Introduced by: A. C. Blaz
Mark Forbes

AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306(a), 106308(a) AND 106312 OF THE GUAM BANKING CODE, TO REPEAL AND RE-ENACT SECTIONS 106202, 106205, 106216(a), 106302 AND 106601 OF THE GUAM BANKING CODE AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE 3.5 TO CHAPTER 106 OF THE GUAM BANKING CODE.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative Intent. It is the intent of the Legislature for Guam to opt-out of interstate mergers pursuant to the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (until June 1, 2001) and to restrict interstate branching pursuant to the provisions of such Act. The Legislature also intends to make certain changes to the Guam Banking Code to avoid conflicts with the Riegle-Neal Act, to facilitate the formation of bank holding companies and to simplify mergers and conversions of territorial banks.

Section 2. Section 100102 of the Guam Banking Code is hereby amended by adding the following paragraphs:

"***Bank holding company*** means a bank holding company as defined in Section 2(a)(1) of the Bank Holding Company Act of 1956, as amended.

Control shall be construed consistent with Section 2(a)(2) of the Bank Holding Company Act of 1956, as amended.

Out-of-state bank has the meaning set forth in §106351 of this Title."

Section 3. Section 106202 of the Guam Banking Code is hereby repealed and re-enacted to read:

"**Section 106202. Out of State Banks.** No out-of-state bank shall transact business in Guam. This Section shall not be deemed to prohibit:

(a) Any out-of-state bank from making loans secured by liens on real property located in Guam;

(b) Any out-of-state bank from being a resulting bank in an interstate merger transaction conducted pursuant to Article 3.5 of this Chapter;

(c) Any out-of-state bank from operating a branch

within the territory to the extent permitted pursuant to Article 3.5 of this Chapter and by §106601; or

(d) Any out-of-state bank doing business within the territory of Guam on the effective date of this Act from operating its branches within Guam in existence of the effective date of this Act."

Section 4. Section 106205 of the Guam Banking Code is hereby repealed and re-enacted to read:

"Section 106205. Incorporators. A territorial bank may be organized by five (5) or more individual incorporators. All incorporators shall be United States citizens and residents of Guam. Each incorporator shall subscribe and pay in full in cash for stock having a par value of not less than one-half of one percent (½ of 1%) of the minimum capital and paid in surplus requirements. Stock of a territorial bank may be legally and beneficially owned only by citizens of the United States, citizens of the Commonwealth of the Northern Mariana Islands or citizens of the former Trust Territory of the Pacific Islands, or by a bank holding company, whether or not such holding company is headquartered on Guam."

Section 5. Section106216(a) of the Guam Banking Code is hereby

repealed and re-enacted to read:

"**Section 106216. Directors and Officers.** (a) The affairs of a territorial bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than five (5) nor more than twenty-five (25), shall be fixed by the by-laws and the number so fixed shall be the board, regardless of vacancies. Unless a bank holding company controls the territorial bank, at least three-fourths (3/4) of the directors of the territorial bank shall be citizens of the United States, two-thirds (2/3) shall be residents of Guam and a majority shall reside within one hundred (100) miles of the place of business of the bank. If a bank holding company controls a territorial bank, at least three-fourths (3/4) of the directors of the territorial bank shall be citizens of the United States and at least two-fifths (2/5) shall be residents of Guam. Each director shall have full record and beneficial ownership free of lien, encumbrance or repurchase agreement of common stock of the bank or of a bank holding company which controls such bank of an aggregate par value or aggregate market value of at least One Thousand Dollars ($1,000.00). Any director who becomes disqualified shall forthwith resign

his office but upon removal of such disqualification he shall be eligible for election. A director who is disqualified may be removed by the board of directors or by the Board. No action taken by a director prior to resignation or removal shall be subject to attack on the ground of disqualification."

Section 6. Section 106301 of the Guam Banking Code is amended by amending the introductory clause and Paragraph (6) and by adding the following new Paragraphs (9), (10), (11) and (12) to read as follows:

"As used in this Article, unless the context requires otherwise...

(6) ***National bank*** means a bank with a charter granted under the National Bank Act by the Office of the Comptroller of the Currency with its main office in Guam.

(9) ***Bank holding company*** has the meaning set forth in §100102 of this Title.

(10) ***Guam bank holding company*** means a bank holding company whose home state, as defined in §106351, is Guam.

(11) ***Out-of-state bank holding company*** means a bank holding company whose state, as defined in Section 2(o)(4) of the Bank Holding Company Act of 1956, as amended, is not Guam.

(12) *Guam bank* has the meaning set forth in §106351 of this Chapter."

Section 7. Section 106302 of the Guam Banking Code is repealed and re-enacted to read:

"Section 106302. Resulting National Bank. Conversion of Territorial Bank to National Bank. Nothing in the laws of Guam shall restrict the rights of a territorial bank to convert into a resulting national bank. The action to be taken by such converting territorial bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the laws of the United States and not by the law of Guam, except that an affirmative vote of the holders of a simple majority of each class of voting stock of a territorial bank shall be required for such conversion, that upon conversion by a territorial bank into a national bank, the rights of dissenting shareholders shall be those specified in §106309."

Section 8. Section 106303 of the Guam Banking Code is hereby amended to read as follows:

"Section 106303. Resulting Territorial Bank. Upon approval by the Commissioner, territorial banks may be merged to result in a territorial

bank, a national bank with its main office in Guam may be merged with a territorial bank to result in a territorial bank, or a national bank having its main office in Guam may convert into a territorial bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the laws of the United States which shall also govern the rights of its dissenting stockholders."

Section 9. Section 106305(a) of the Guam Banking Code is hereby amended to read:

"Section 106305. Merger; Approval by Stockholders of Territorial Banks. (a) To be effective, a merger which is to result in a territorial bank must be approved by the stockholders of each merging territorial bank by a vote of a simple majority of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the continuing territorial bank, including the amendments in the merger agreement, as the charter and by-laws of the resulting bank."

Section 10. Section 106306(a) of the Guam Banking Code is hereby

amended to read:

"**Section 106306. Effective Date of Merger; Filing of Approved Government Certificate of Merger as Evidence.** (a) A merger which is to result in a territorial bank shall, unless a later date is specified in the agreement, become effective upon the filing with the Commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging territorial bank approving it. The charters of the merging banks, other than the continuing bank, shall thereupon automatically terminate."

Section 11. Section 106308(a) of the Guam Banking Code is hereby amended to read as follows:

"**Section 106308. Continuation of Corporate Entity; Use of Old Name.** (a) A resulting territorial or national bank shall be considered the same business and corporate entity as each merging territorial bank or as the converting territorial bank with all the property, rights, powers, duties and obligations of each merging bank or the converting bank, except as affected by Guam law in the case of a resulting territorial bank or the Federal law in the case of a resulting national bank, and by the charter and by-laws of the

resulting bank."

Section 12. Section 106312 of the Guam Banking Code is hereby amended to read:

"Section 106312. Book Value of Assets. Without approval by the Commissioner, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of a merging or converting territorial bank at the time of its last examination by a territorial or national bank examiner before the effective date of the merger or conversion."

Section 13. A new Section 106313 is hereby added to the Guam Banking Code to read:

"Section 106313. Bank Holding Company Formation and Acquisition. (a) In order to facilitate the acquisition of a territorial bank, a bank holding company or a company, which upon the acquisition of such territorial bank would become a bank holding company, may establish a wholly owned, non-banking subsidiary corporation especially for such purpose and merge such subsidiary with and into the territorial bank with the effect that the territorial bank shall become a subsidiary of the bank holding company and the territorial bank shall be deemed to be a

continuing bank for purposes of this Article. Any merger provided for in this Section may only be consummated after such merger has been approved by the affirmative vote of the holders of a simple majority of each class of voting stock of the territorial bank as provided in §106305 of this Article as if such merger was the merger of two (2) territorial banks. The rights of dissenting shareholders of the territorial bank in any such merger shall be those specified in §106309 of this Article. Sections 106306 and 106308 of this Article shall also apply to any merger provided for in this Section as if any such merger was the merger of two (2) territorial banks. The acquisition of a territorial bank by a bank holding company, including an out-of-state bank holding company, or by a company which after such acquisition will be a bank holding company, shall not affect the property, rights and powers of such territorial bank under the laws of Guam.

(b)(1) An acquisition by an out-of-state bank holding company of a Guam bank shall not be permitted under this Article unless the Guam bank shall have been in continuous operation as a Guam bank, on the date of such acquisition, for a period of at least five (5) years.

(2) The Commissioner may waive the restriction in Paragraph (1) in the case of a Guam bank that (i) has been determined by a Federal bank supervisory agency to be in default or in danger of default, or (ii) is to be acquired by an out-of-state bank holding company with assistance under Section 13(c) of the Federal Deposit Insurance Act.

(c) There shall be no limit under Guam law on the percentage of the total amount of deposits in insured depository institutions in Guam that may be held or controlled by an out-of-state bank holding company, including all insured depository institutions that are its affiliates, as a result of the acquisition by such company of a Guam bank or a Guam bank holding company."

Section 14. A new Article is hereby added to Chapter 106 of Division 4 of Title 11 of the Guam Code Annotated to read as follows:

"Article 3.5.

Interstate Branching and Bank Mergers.

Section 106350. Elections. This Article constitutes: (a) An election to prohibit interstate merger transactions pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act until June 1, 2001;

(b) An election to prohibit interstate branching through the acquisition of a branch of a territorial bank in Guam pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act; and

(c) An election to prohibit interstate branching through de novo establishment of a branch in Guam pursuant to Section 5155 of the Revised Statutes or Section 18(d) of the Federal Deposit Insurance Act.

Section 106351. Definitions. As used in this Article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

Acquisition of a branch means the acquisition of a branch located in a host state, without engaging in an "interstate merger transaction" as defined in this Article.

Bank means an "insured bank" as defined in 12 U.S.C. Section 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. section 3101(7), except that the term "bank" shall include any foreign bank organized under the laws of a territory of the United States, including Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands, the deposits of which are insured by the Federal Deposit

Insurance Corporation.

Bank holding company has the meaning set forth in §100102 of this Title.

Bank supervisory agency means

(1) Any agency of a state with primary responsibility for chartering and supervising banks; and

(2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and any successor to these agencies.

Branch has the meaning set forth in §106601 of this Chapter.

Control has the meaning set forth in §100102 of this Title.

De novo branch means a branch of a bank located in a host state which:

(1) Is originally established by the bank as a branch; and

(2) Does not become a branch as a result of (i) the acquisition of another bank or branch of another bank, or (ii) the merger, consolidation or conversion involving any bank or branch.

Guam bank means a bank whose home state is Guam.

Home state means:

(1) With respect to a state bank, the state by which the bank is chartered; and

(2) With respect to a national bank, the state in which the main office of the bank is located.

Home state regulator means, with respect to an out-of-state bank, the bank supervisory agency of the state in which the bank is chartered.

Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

Interstate merger transaction means:

(1) The merger or consolidation of banks with different home states, including the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

Out-of-state bank means a bank whose home state is a state other than Guam.

Out-of-state state bank means a bank chartered under the laws of any state other than Guam.

Resulting bank means a bank that has resulted from an interstate merger transaction under this Article.

State, whenever this word is used in its uncapitalized form, means any state of the United States, the District of Columbia, and any territory of the United States, including Puerto Rico, American Samoa, Guam and the U.S. Virgin Islands.

Substantially all means, with respect to the total assets or the total number of branches of a bank, at least ninety percent (90%).

Territorial bank has the meaning set forth in §100102 of this Title.

Section 106352. Prohibition on Interstate Merger Transactions. Pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act, no Guam bank may engage in a merger transaction involving an out-of-state bank. This provision shall become inapplicable and merger transactions involving Guam banks and out-of-state banks shall be permitted on and after June 1,

2001.

Section 106353. Provisions Governing Interstate Merger Transactions Once Authorized. (a) Immediately upon the authorization of interstate merger transactions in Guam, one (1) or more Guam banks may enter into an interstate merger transaction with one (1) or more out-of-state banks under this Article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Guam of a Guam bank that participated in the transaction, if the conditions and filing requirements of subsections (b) and (c) of this Section are met.

(b) The following conditions shall apply to any merger between a Guam bank and an out-of-state bank:

(1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Guam bank, or of all or substantially all of the branches of a Guam bank, shall not be permitted under this Article unless the Guam bank shall have been in continuous operation as a Guam bank, on the date of such acquisition, for a period of at least five (5) years.

(2) For the purposes of Paragraph (1), a Guam bank chartered solely for the purpose of acquiring another Guam bank is considered to have

been in existence for the same period as the Guam bank to be acquired, so long as it does not open for business at any time before acquisition.

(3) The Commissioner may waive the restriction in Paragraph (1) in the case of a Guam bank that (i) has been determined by a federal bank supervisory agency to be default or in danger of default, or (ii) is to be acquired in an interstate merger transaction involving assistance under Section 13(c) of the Federal Deposit Insurance Act.

(4) There shall be no limit under Guam law on the percentage of the total amount of deposits in insured depository institutions in Guam that may be held or controlled by an out-of-state bank, including all insured depository institutions that are its affiliates, as a result of an interstate merger transaction by such out-of-state bank with a Guam bank.

(c) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Guam bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal supervisory agency, and shall submit a copy of that application to the Commissioner and pay such filing fees as the Commissioner may

establish by rule. The filing fees shall be non-refundable. Any territorial bank which is a party to an interstate merger transaction shall comply with Article 3 of this Chapter to the extent applicable, including §106309 thereof, and with other applicable laws. If the resulting bank in the interstate merger transaction is an out-of-state bank, the Commissioner shall not accept for filing the agreement of merger pursuant to §106306 of this Chapter until the out-of-state bank has filed a confirmation in writing of compliance with this Section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national bank, the resulting bank shall file with the Commissioner a confirmation in writing of compliance with this Section.

Section 106354. Authority of Territorial Banks to Establish a De Novo Branch or Acquire a Branch Outside Guam. (a) With the prior approval of the Commissioner, any territorial bank may establish and operate a de novo branch or acquire and operate a branch outside Guam, including in another state.

(b) A territorial bank desiring to establish and operate a de novo branch or acquire and operate a branch under this Section shall comply

with, and the application shall be processed in accordance with §106601 of this Chapter. In acting on the application, the Commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant territorial bank may establish and operate the branch when it has received the written approval of the Commissioner.

Section 106355. Prohibition of Out-of-State Banks to Establish De Novo Interstate Branch.

(a) An out-of-state bank that does not operate a branch in Guam acquired through an interstate merger transaction under this Title may not establish and operate a de novo branch in Guam.

(b) An out-of-state bank that does not operate a branch in Guam acquired through an interstate merger transaction under this Title may not establish and operate a branch in Guam through the acquisition of a branch.

(c) Notwithstanding subsection (b), the Commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a Guam bank that has been determined by a Federal bank supervisory agency to be in default or in danger of default.

Section 106356. Powers; Principal Guam Office. (a) An out-of-state

bank which establishes or operates a branch in Guam under this Title may conduct any activities at the branch in Guam that are authorized under the laws of Guam for territorial banks.

(b) An out-of-state bank that has acquired a branch in Guam in an interstate merger transaction pursuant to this Article may establish or acquire additional branches or other places of business in Guam as authorized pursuant to Article 6 of this Division to the same extent that any territorial bank may establish or acquire a branch or other places of business in Guam under applicable Federal and state law.

(c) If an out-of-state bank operates two (2) or more branches in Guam, the out-of-state bank shall designate one (1) of its branches as its principal office in Guam.

Section 106357. Examinations; Periodic Reports; Cooperative Agreements; Assessment of Fees. (a) To the extent consistent with Subsection (c), the Commissioner may examine any branch established and maintained in Guam by an out-of-state bank as the Commissioner deems necessary to determine whether the branch is being operated in compliance with the laws of Guam and in accordance with safe and sound banking

practices. Sections 103105 and 103106 shall apply to the examinations of the out-of-state banks in the same manner as to the examinations of territorial banks.

(b) The Commissioner may require periodic reports regarding any out-of-state bank that operates a branch in Guam. The required reports shall be provided by the bank or bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the Commissioner under this Subsection shall be (1) consistent with the reporting requirements applicable to territorial banks and (2) appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under this Title.

(c) The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Guam of an out-of-state bank, or any branch of a territorial bank in any host state, and the Commissioner may accept the parties' reports of examination and reports of investigation in lieu of

conducting the Commissioner's own examinations or investigations.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a territorial bank or an out-of-state state bank operating a branch in Guam to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Guam of an out-of-state bank or any branch of a territorial bank in any host state; provided that the Commissioner at any time may take action independently if the Commissioner deems the action to be necessary or appropriate to carry out the Commissioner's responsibilities under this Title or to ensure compliance with the laws of Guam; provided further that, in the case of an out-of-state bank, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and

soundness matters.

(f) Each out-of-state bank that maintains one (1) or more branches in Guam may be assessed and, if assessed, shall pay supervisory, examination, and other fees in accordance with the laws of Guam and rules of the Commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between the parties and the Commissioner.

Section 106358. Enforcement. If the Commissioner determines that a branch maintained by an out-of-state state bank in Guam is being operated in violation of any provision of the laws of Guam, or that the branch is being operated in an unsafe and unsound manner, the Commissioner may take all enforcement actions as the Commissioner could take if the branch were a territorial bank; provided that the Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

Section 106359. Notice of Subsequent Merger, Etc. Each out-of-state bank that operates a branch in Guam, or the home state regulator of the bank, shall give at least thirty (30) days' prior written notice (or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or Federal law) to the Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the Bank Merger Act, as amended, the Change in Bank Control Act of 1978, as amended, or the Bank holding Company Act of 1956, as amended, or any successor statutes thereto.

Section 15. Section 106601 of the Guam Banking Code is hereby repealed and reenacted to read:

"**Section 106601. Branch Banks.** (a) As used in this Article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

Branch means a place of business of a bank, other than the bank's main office, at which deposits are received, loan payments are received, cash

is dispensed or money is lent, including any customer-bank communication terminal established or operated by a bank at a location other than such bank's premises.

Customer-Bank Communication Terminal means any electronic device, either manned or unmanned, activated by a bank customer, at which deposits are received, loan payments are received, cash is dispensed or money is lent. An automated teller machine and a cash dispensing machine or any device that performs the same or similar functions are two (2) types of unmanned 'customer-bank communication terminals.' However, for the purposes of this Chapter, point-of-sale devices, personal computers without the ability to accept deposits or payments or dispense cash or other financial instruments, and standard telephones which may be used to access a bank's banking services shall not be considered to be a 'customer-bank communication terminal'

Out-of-state bank has the meaning set forth in §106351 of this Chapter.

Interstate merger transaction has the meaning set forth in §106351 of this Chapter.

(b) A bank engaging in the banking business in Guam pursuant to the provisions of this Title may operate one (1) or more branches within Guam, and, subject to the approval of the Banking Board, may establish or acquire additional branches upon showing that (1) there is sufficient need for such branch, (2) the proposed branch has reasonable opportunity to be economically self-sustaining, and (3) the applicant demonstrates by clear and convincing evidence that the establishment and operation of such branch will promote community reinvestment and fair lending. The application to establish any branch bank shall be considered by the Board after a public hearing at which all interested parties may present their comment.

(c) No out-of-state bank having a branch office in Guam as of the effective date of this Act may establish any additional branches except and until it engages in an interstate merger transaction with a territorial bank.

(d) Installing additional customer-bank communication terminals at a bank's main office or existing branches shall not be considered as the establishment of an additional branch.

Section 16. Severability Clause. If any Article, Section, Subsection, sentence, clause or phrase of this Act is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each Article, Section, Subsection, sentence, clause and phrase thereof irrespective of the fact that any one (1) or more of the Articles, Sections, Subsections, sentences, clauses or phrases be declared invalid.

Section 17. Renumbering of Sections. The Compiler of Laws shall renumber the codified Sections of this Act in order to bring them into agreement with the codification structure of the Guam Code Annotated.

CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 5/15/97
Time: 1:57p
Rec'd by:
Print Name: Marlene Bruenas

MAY 15 1997

Refer to
Legislative Secretary

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By
Time 4:37pm
Date 5-15-97

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 141 (COR), "AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306, 106308, AND 106312 OF THE GOVERNMENT CODE (GUAM BANKING LAW), TO REPEAL AND REENACT SECTIONS 106202, 106205, 106216, 106302, AND 106601 OF THE GOVERNMENT CODE (GUAM BANKING LAW) AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE (ARTICLE 3.5) TO CHAPTER 106 OF THE GOVERNMENT CODE (GUAM BANKING LAW)", which I have **vetoed.**

I.
Requirements of Riegle-Neal Interstate Banking and Branching Efficiency Act.

According to federal law, the Riegle-Neal Interstate Banking and Branching Efficiency Act, Guam has through May 31, 1997 to either "opt-in" or "opt-out" of coverage of these provisions of federal law. Riegle-Neal is a federal law which removes impediments to mergers and acquisitions between banks of different states. In this sense, it is a de-regulation of the banking industry.

If Guam "opts-out" of Riegle-Neal, then interstate merger transactions between Guam banks and banks of other states may not take place. "Opting-out" consists of enacting a law prior to June 1, 1997 that expressly prohibits merger transactions involving out-of-state banks. If Guam "opts-out", then it is generally understood that Guam may "opt-in" at a later time.

If Guam "opts-in", then Guam may do so by passing a statute that expressly permits interstate merger transactions with all out of state banks; however, conditions may be imposed upon a branch within the state resulting from an interstate merger.

If Guam does nothing, by neither "opting-in" nor "opting-out", then, by automatic default, interstate mergers and acquisitions of banks will be permitted between Guam banks and banks of other states. The way this automatic default "opt-in" would work is that out of state national banks would be permitted to merge with Guam banks; however, Guam banks would **not** be permitted to participate in interstate mergers and still remain a Guam bank. This result, of course, would not be advantageous to Guam.

II.
Prior veto of similar legislation.

In December, 1996, I vetoed Substitute Bill No. 692, which "opted out" of Riegle-Neal by prohibiting any off-island chartered bank not currently doing business on Guam from opening a branch on Guam, and prohibiting an off-island holding company from acquiring the assets of a local bank unless **all** of the assets of the local bank were acquired. The reason for this veto was that the legislation was premature and seemed to prohibit Guam from becoming a Western Pacific Regional Center for finance, as envisioned in **The Way Forward** and **Vision 2001**.

Guam needs access to large pools of capital for investment and transactional businesses, as well as the flexibility required for international commerce. Also, time was needed to examine all of the ramifications of the choices open to Guam, before taking any definite action.

III.
Analysis of Substitute Bill No. 141.

The language of Substitute Bill No. 141 purports to "opt-out" of Riegle-Neal. But does it? Let's look at the language of the various sections of this bill.

1. Page 1, lines 2-4 state: "It is the intent of the Legislature for Guam to opt-out of interstate mergers pursuant to the provisions of the Riegle-Neal Interstate banking and Branching Efficiency Act of 1994 (until June 1, 2001)."

   This is a legislative **intent** section. This is not an **operative** section of the legislation. Also, the parenthetical remark, "(until June 1, 2001)" does not effectuate an opting-in on that date contained within the parenthesis. In fact, it leaves open the question of what choice Guam has made, or will make, on June 1, 2001.

2. Page 11, lines 16-18 state: "This Article constitutes: (a) An election to prohibit interstate merger transactions pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act until June 1, 2001."

   This sentence seems clear on its face, as an election to opt-out of Riegle-Neal by prohibiting interstate merger transactions. Upon closer scrutiny, the enigmatic date of June 1, 2001 is still present. What happens on June 1, 2001? There is no language stating that Guam is opting-in on June 1, 2001, or continuing to opt-out on June 1. 2001. There is no language whatsoever to state what is happening on June 1, 2001.

3. Page 15, lines 15-18 state: "Pursuant to Section 44 (a)(2) of the Federal Deposit Insurance Act, no Guam bank may engage in a merger transaction involving an out-of-state bank. This provision shall become inapplicable and merger transactions involving Guam banks and out-of-state banks shall be permitted on and after June 1, 2001."

   What kind of merger transactions involving Guam banks and out-of-state banks shall be permitted on and after June 1, 2001? The answer seems to lie on Pages 16-18. If the resulting bank is an out-of-state bank, the resulting bank may only operate the Guam bank branches that participated in the merger. Also, the Guam bank must have been in continuous operation as a Guam Bank for a prior period of at least 5 years. This means that any merger would lead to a status quo situation, with no possibility of expansion for the resulting bank.

4. Page 2, lines 10-11: "No out-of-state bank shall transact business in Guam. . [but this shall not prohibit] any out-of-state bank from being a resulting bank in an interstate merger transaction conducted pursuant to Article 3.5 of this Chapter; [or]. . . Any out-of-state bank from operating a branch within the territory to the extent permitted pursuant to Article3.5 of this Chapter and by §106601."

   This means that a Guam bank may be merged into an out-of-state bank, but the resulting out-of-state bank could not operate any branch other than the one that took part in the merger. In other words, there would be no expansion of the resulting bank, even though the resulting bank may have the assets to expand.

IV.
Summary

This legislation is ineffective as a method of unequivocally"opting-out" of the Riegle-Neal Interstate Banking and Branching Efficiency Act, although it states that the intent of the legislation is to "opt-out". The Riegle-Neal Act requires some type of permanent choice made on behalf of Guam, yet none is presented in this bill.

The bill seems to temporarily "opt-out", yet, except under the most restrictive conditions, the provisions for interstate bank mergers which would be in effect after June 1, 2001 also prohibit interstate mergers.

By the same token, there is no specific language "opting-in" at any point in time. The language is ambiguous, leaving the possibility that Guam did not take any defined action. This leaves Guam open to the interpretation that no choice was made, and Guam will be automatically "opted-in" under the default provisions of the Riegle-Neal Act.

V.
Legislative action is needed immediately.

Under the federal law, Guam only has until June 1, 1997 to either "opt-in" or "opt-out" of the provisions of Riegle-Neal, otherwise a type of automatic default opting-in will occur which will most definitely not be beneficial to Guam. The Guam Legislature has merely days to make a definite decision.

I sincerely hope that the Legislature will chose to make Guam into a Western Pacific Regional Center for Finance and expand the opportunities to our people. We need to opt-in in a manner that will be beneficial to Guam. We do not need to take any steps backwards.

Very truly yours,

Carl T. C. Gutierrez
Governor of Guam

Attachment 00211

cc: The Honorable Joanne M. S. Brown
Legislative Secretary

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 141 (COR), "AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306(a), 106308(a) AND 106312 OF THE GUAM BANKING CODE, TO REPEAL AND RE-ENACT SECTIONS 106202, 106205, 106216(a), 106302 AND 106601 OF THE GUAM BANKING CODE AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE 3.5 TO CHAPTER 106 OF THE GUAM BANKING CODE," was on the 3rd day of May, 1997, duly and regularly passed.

ANTONIO R. UNPINGCO
Speaker

Attested:

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 3 day of May, 1997, at 12:15 o'clock P.M.

Assistant Staff Officer
Governor's Office

APPROVED:

CARL T. C. GUTIERREZ
Governor of Guam

Date: _____

Public Law No. _____

PL24-35

TWENTY-FOURTH GUAM LEGISLATURE

Office of the Vice-Speaker

ANTHONY C. BLAZ

May 2, 1997

LEGISLATIVE COMMITTEE MEMBERSHIP

Chairman
Finance & Taxation

Vice-Chairman
Rules, Government Reform & Federal Affairs

Education

Natural Resources

Health & Human Services

Tourism, Economic Development & Cultural Affairs

Judiciary, Public Safety & Consumer Protection

Transportation, Telecommunications, & Micronesian Affairs

MEMBERSHIP

Guam Finance Commission

Commission on Self Determination

The Honorable Speaker Antonio R. Unpingco
24th Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Finance and Taxation now reports its findings on Bill No.141, as substituted, **An Act to amend Sections 100102, 106301, 106303, 106305, 106306(a). 106308(a), and 105312 of the Guam Banking Code, to Repeal and Reenact Sections 106202, 106205, 106216(a), 106302 and 106601 of the Guam Banking code and to Add a New Section 106313 and a New Article (Article 3.5) to Chapter 106 of the Guam Banking Code** to the full Legislature with the recommendation **TO DO PASS.**

Votes of the committee members are as follows:

To Pass	7
Not To Pass	0
Inactive File	0
Abstained	1
Off-Island	0
Not Available	0

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely,

Anthony C. Blaz

Attachments

155 Hesler St. Agana, Guam 96910 Tel: 472-3557/58/60 Fax: 472-3562 EMail: tonyblaz@kuentos.guam.net

Committee on Finance & Taxation
TWENTY-FOURTH GUAM LEGISLATURE
Vice-Speaker Anthony C. Blaz, Chairman

Voting Sheet

Bill 141

An act to amend Sections 100102, 106301, 106303, 106305, 106306, 106308 and 106312 of the government code (Guam banking law), to repeal and reenact sections 106202, 106205, 106216, 106302, 106601 of the government code (Guam banking law) and to add a new Section 106313 and a new article (3.5) to chapter 106 of the government code (Guam banking law).

	To Pass	Not to Pass	Abstain	Inactive File
Anthony C. Blaz, Chairman	✓			
Mark Forbes, Vice-Chairman	✓			
Elizabeth Barrett-Anderson			✓	
Joanne M.S. Brown				
Edwardo J. Cruz	✓			
Carlotta Leon Guerrero	✓			
Lawrence F. Kasperbauer	X			
Alberto A.C. Lamorena V				
John C. Salas	✓			
Thomas C. Ada				
Mark C. Charfauros				
William B.S.M. Flores				
Francis E. Santos				

Twenty-Fourth Guam Legislature

Committee on Finance & Taxation

Vice-Speaker Anthony C. Blaz, Chairman

155 Hesler St.

Agana, Guam 96932

Committee Report on

Bill 141

An Act to Amend Sections 100102, 106301, 106303, 106305, 106306(a), 106308(a) and 106312 of the Guam Banking Code, to Repeal and Reenact Sections 106202, 106205, 106216(a), 106302, 106601 of the Guam Banking Code and to Add a New Section 106313 and a New Article (Article 3.5) to Chapter 106 of the Guam Banking Law.

I. Overview

The Committee on Finance & Taxation held a public hearing on Monday, February 24, 1997 at 2:30 p.m. to hear public testimony on Bill No. 141 at the Legislative Public Hearing Room. Public Notice was announced in the February 20th and February 24th , 1997 issues of the Pacific Daily News.

Committee Members Present:

Vice-Speaker Anthony C. Blaz, Chairman
Senator Elizabeth Barrett-Anderson
Senator Edwardo Cruz
Senator Carlotta Leon Guerrero
Senator Tom Ada
Senator William B.S.M. Flores
Senator Francis Santos

Non-Members Present:

Senator Frank B. Aguon Jr.
Senator Vicente C. Pangelinan
Senator Lou Leon Guerrero

Providing Public Testimony on the Bill:

Kurt S. Moylan, CEO, Citizens Security Bank **(oral/written)**
The Honorable Judge Cristobal C. Duenas (Retired), **(written)**

Eduardo G. Camacho Citizens Security Bank, **(written)**
Tom Grimes, Senior Vice-President, West Pacific Division Manager, Bank of Hawaii **(oral/written)**
Anthony Leon Guerrero, President & CEO, Bank of Guam **(oral/written)**
Martha Camacho, First Hawaiian Bank **(oral/written)**
Philip J. Flores, President, Guam Savings & Loan **(oral/written)**
Joseph T. Duenas, Director, Department of Revenue & Taxation **(oral/written)**

II. Summary of Testimony

Mr. Anthony A. Leon Guerrero testified in support of Bill No.141 without any changes. Mr. Kurt S. Moylan, Mr. Eduardo G. Camacho, The Honorable Cristobal C. Duenas' written testimony and Mr. Philip Flores, all testified in support Bill No. 141 without Section 15.106601.(b) restricting to four the number of branches that a bank with assets greater than $2 billion can operate. Additionally, Section 15.106601.(d) (i) which requires a bank applying for a new branch shall have a manager who is a bona fide resident of the territory of Guam, and (ii) which requires the new branch to employ not less than five full time employees including the manager.

Mrs. Martha Camacho testified in support of Bill No. 141 without the restrictions in Section 15.106601.(b) above.

Mr. Thomas A. Grimes testified that Bill No. 141 in its present draft does not promote competition in the banking industry and contains the following restrictions which in fact reduce competition:

1. prohibit de novo branching by new out-of-state banks;
2. prohibit acquisitions of bank branches or of banks less than five years old;
3. continue to call ATM's bank "branches";
4. restrict the number of branches that non- territorially chartered banks can operate on Guam;
5. restrict the number of branches that a bank with assets greater than $2 billion can operate;
6. require that a bank applying for a new branch employ a minimum of five people.

Mr. Joseph T. Duenas, in his written testimony, stated that certain provisions of Bill 141 appear to be inorganic and/or unconstitutional. He requested the deletion of the following provisions: Section 6. Section 106301 of the Government Code (Guam Banking Code) is amended by amending paragraph (6) and by adding the following new paragraphs (9), (10), (11) and (12) to read as follows:

(6) **National Bank** means a bank with a charter granted under the National Bank Act by the Office of the Comptroller of the Currency with its **main office in Guam.**

Finding & Recommendation

The Committee on Finance & Taxation having conducted a sufficient public hearing addresses the concerns for the removal of certain provisions and presents its findings with a **recommendation to do pass Bill 141 as substituted.**

CITIZENS
Security Bank
Your Banking Partner • MEMBER FDIC

February 24, 1997

The Honorable Anthony C. Blaz, Chairman
Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Hafa Adai Senator Blaz and Members of the Committee on Finance and Taxation:

I am Kurt Moylan, Chairman of the Board of Guam's second locally-owned and chartered commercial bank, Citizens Security Bank. We maintain offices in the Julale Center in Agana, the Harmon Business Center in upper Tumon and, as you may know, have recently applied for permission to open our third branch which will be located in Dededo.

I am here today to testify in support of Bill 141, as originally submitted. As co-author with Guam Savings and Loan of the original submission of this bill, it was our intent to ensure that the impact of the Riegle Neal Interstate Banking and Branching Efficiency Act of 1994 was minimized, and to provide for an orderly expansion of the banking industry on Guam while protecting the local banks, local bank investors and the consumers of Guam. As a local bank, we have a vested interest in the economic prosperity of Guam and therefore must ensure that the financial impacts of federal and interstate bank branching laws are managed or minimized, as they impact our industry.

I must, however, protest revisions that have been made to the bill which, in our opinion, are clearly discriminatory, counter to the intent of Riegle Neal, and likely to be considered unconstitutional. These revisions, located on page 19 and beginning at line 4 through line 9 and continuing on line 17 through line 2 of page 20 as subparagraph "d", must be removed in order to retain the integrity of the legislation and maintain our support. We will oppose the bill if not restored to it's original version.

As it's title implies, Riegle Neal provides for interstate banking but permits individual jurisdictions to determine their own fate as it relates to interstate branching. Individual states and territories are given the option of "opting out" of interstate branching completely, a path Guam elected not to take last year, or "opting in" in which case we have the right to set various parameters relative to the nature of bank acquisitions and branching to be permitted. States and Territories that do not take specific action before June 1, 1997 automatically "opt in" to interstate branching. I have attached a summary which more clearly spells out the options available under the federal legislation.

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HBC Building
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Fax: (671) 649-6151

As of December 31, 1996, 42 states and territories had enacted legislation in response to Riegle Neal. Of those, 39, including Puerto Rico and the District of Columbia, have specifically opted in. Only Texas has opted out. Of the 39 that have opted in, 29 (74%) prohibit open branching, and 24 (62%) prohibit acquisition of anything less than a whole bank and include age restrictions of 3 to 5 years on banks to be acquired.

Bill 141 includes provisions adopted by the majority of the states and parallels legislation adopted by the state of Hawaii. Additionally, Bill 141 goes a step further and addresses an entire aspect of banking that is currently non-existent in local statutes. The implementation of a statute governing the establishment and activities of bank holding companies here on Guam will provide an alternative avenue for Guam banks to expand into other U.S. jurisdictions while providing some restriction for those holding companies entering our jurisdiction.

With Bill 141, we are striving to enact legislation related to interstate branching which favors Guam's local banking system, while still encouraging competition from banks chartered outside our territory. We support the free flow of financial services within our jurisdiction, but must protect the local banks and their investors who have a true vested interest in providing the competitive prices and services that our community requires. We encourage legislation that safeguards and stimulates the local banking industry, while at the same time manages the potential growth of financial institutions chartered outside of Guam.

In this endeavor, we must also be mindful of the Governor's Vision 2001 and ensure that our local banking industry plays it's part in Guam's economic future. Guam is one of the more competitive banking markets in the country, with off island banks currently holding over 60% of the $1.5 billion deposit base and over 80% of the $2.5 billion in outstanding loan balances. This imbalance between loans and deposits is also evident of the attractive nature of the Guam loan market with capital continuing to flow in at a much faster rate than deposit growth. The continuing availability of capital has been emphasized recently by the entry into the Guam market of Norwest Financial and Finance Factors and by the commitment by Hawaiian and Taiwanese banks to fund the majority of the Tumon infrastructure financing requirements. We must be careful not to adopt legislation which sends the wrong signals to the capital markets or restricts the future flow of capital to our island. Bill 141 does neither.

By "Opting In" to the Riegle-Neal Act with Bill 141, we are exercising our options by amending various sections of the Guam Banking Law. A favorable vote will maintain the status quo in the Guam banking industry, as well as the franchise value of local banks. I urge your support of the bill as initially submitted.

I appreciate the opportunity to testify in support of Bill 141 today. If you have any questions on the issues or any other banking matters, please do not hesitate to call on me.

Sincerely,

Kurt S. Moylan
Chairman of the Board

TWENTY-FOURTH GUAM LEGISLATURE
1997 First Regular Session

Bill 141 - Summary

This Bill amends various sections of the Guam Banking Law to respond to the Riegle Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (Riegle Neal).

Riegle Neal specifically provides (among other things) that:

- Effective September 1, 1995, bank holding companies may acquire or establish a bank anywhere in the country, regardless of local law.
- Banks within holding companies may act as agents for each other - including taking deposits and loan payments.
- By June 1, 1997 states and territories must decide whether to participate in interstate branching. The interstate branching option permits decisions on interstate mergers, acquisition of single branches, "de novo" branching (the opening of a new branch) and age restrictions of banks or branches acquired.
- If a local jurisdiction does not wish to participate it must pass legislation to "opt out". States and territories that "opt out" will prohibit interstate branching for both state and national banks into and out of their borders.
- States and territories that want to participate and wish to define the parameters of participation must pass legislation "opting in" prior to June 1, 1997.
- Foreign banks (including those local banks chartered on Guam) may branch interstate by acquisition only, unless states act to allow de novo branching for all banks.

Bill 141 "opts in" to Riegle Neal, permitting interstate mergers, but restricting acquisitions or mergers to whole banks at least five years old and prohibiting acquisitions of single branches or de novo branching. The bill also facilitates the formation of bank holding companies on Guam and defines the procedures for acquisition of a bank by a bank holding company.

As of December 31, 1996, 42 states and territories had enacted legislation in response to Riegle Neal. Of those, 39, including Puerto Rico and the District of Columbia, have specifically opted in. Only Texas has opted out. Of the 39 that have opted in, 29 (74%) prohibit de novo branching, and 24 (62%) prohibit acquisition of anything less than a whole bank and include age restrictions of 3 to 5 years on banks to be acquired.

Bill 141 was patterned after legislation adopted by the state of Hawaii and is identical in primary provisions to that law. This bill maintains the status quo in Guam's banking industry and restricts, but does not preclude expansion by off island banks.

A favorable vote on Bill 141 maintains the status quo in the banking industry on Guam, while protecting the franchise value of local banks. A negative vote will let Washington, D.C. determine the structure of our industry and likely result in the ultimate demise of the local banking industry.

CITIZENS
Security Bank
Your Banking Partner • MEMBER FDIC

February 24, 1997

The Honorable Anthony C. Blaz, Chairman
Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Hafa Adai Senator Blaz and Members of the Committee on Finance and Taxation:

For the record, my name is Judge Cristobal C. Duenas. I am an investor in and serve as a Director for Citizens Security Bank. I am here today to testify in support of the original version of Bill 141 as part of our continuing efforts to ensure Guam's control of her banking destiny and because it makes good economic sense.

Financial services and in particular, the banking industry, are key components of economic growth on Guam. We (the local banks) want to ensure that the banking industry on Guam continues to be influenced through local ownership and seek to implement industry statutes which are determining factors in influencing positive economic opportunities and changes in the future.

Bill 141 amends various sections of the Guam Banking Law in response to the Riegle Neal Interstate Banking and Branching Efficiency Act of 1994. It's intent was to maintain the status quo in the Guam banking industry, therefore continuing the many positive contributions of the local Guam banking industry, including:

- Local banks share Guam's history.
- Local banks share an understanding of local needs.
- Local banks are committed to the community.
- Local banks are here for the long-haul.
- Local banks generate employment
- Local banks generate a profit – which remains on -island.
- Local banks invest locally.
- Local banks are motivated to introduce banking innovations first.
- Local banks assure healthy and positive competition.
- Local banks safeguard Guam's voice in local and international finance.

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Fax: (671) 649-6151

I encourage you to vote favorably on Bill 141 as originally submitted and enact legislation which positively influences and defines Guam's control of our banking industry. Bill 141 supports free enterprise while at the same time protecting Guam's local banks which have true vested interests in the economic prosperity of our island.

Thank you for the opportunity to testify today.

Sincerely,

Cristobal C. Duenas
Judge (Retired)

CITIZENS
Security Bank
Your Banking Partner • MEMBER FDIC

February 24, 1997

The Honorable Anthony C. Blaz, Chairman
Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Hafa Adai Senator Blaz and Members of the Committee on Finance and Taxation:

For the record, I am Eduardo G. Camacho, an investor in Citizens Security Bank and, as President of Pacific Financial Corporation, a vested member of Guam's financial services industry.

I am here today in support of Bill 141 as it was originally submitted. We believe that Guam should control her own destiny and this legislation takes a small step in that direction by exercising our rights to define how our banking industry will grow in the future. As a local bank we have an investment in our community and therefore support action that will maintain local control of Guam's banking industry.

We support free enterprise and the free flow of financial services on our island. It is through free enterprise that our island's economy will continue to grow. However, the success of that growth can only be assured when, with your leadership, we provide the direction necessary to achieve our goals.

Citizens Security Bank supports the intention of Bill 141 as originally drafted, as it addresses specific issues of interstate banking which impact Guam and its local banks. It maintains the status quo in the industry while providing for an orderly expansion of financial services on Guam. It protects the franchise value of our local banks and the investment in those institutions by over 3,000 local people. It does not preclude the entry into our market of new financial institutions. And, it sends the right message to capital markets to encourage continued investment in Guam. Banks and other financial institutions chartered outside of Guam currently control over 60% of Guam's $1.5 billion deposit base and without controls, would gladly move to acquire more of that share. The local banks have had the greatest impact in the development of our small businesses and it has been the local banks that have encouraged or provided for the innovations that have brought the costs of financing down on Guam. By "Opting In" to the Riegle-Neal Act with Bill 141, we are encouraging growth but ensuring that our local banking industry remains healthy and that local investors are protected.

A favorable vote on the bill, as originally introduced, will maintain the status quo in the Guam banking industry, and protect the franchise value of local banks. I encourage your support.

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I appreciate the opportunity to testify in support of Bill 141 today. If you have any questions on the issues or any other banking matters, please do not hesitate to call on me.

Sincerely,

Eduardo G. Camacho

Bank of Hawaii

February 24, 1997

The Honorable Anthony C. Blaz
Vice Speaker
Chairman, Committee on Finance
and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Chairman Blaz:

Thank you for the opportunity to comment on Bill 141 which has been submitted to the 24th Guam Legislature for consideration.

The intent of the Riegle-Neal Interstate Banking Act, to which Bill 141 proposes to "opt-in", was to remove barriers to banks operating between the states in order to foster greater economies of scale and competition. Guam's response to that law should be based on Guam's unique political and economic circumstances and, most importantly, on the type of open, competitive, and vibrant economy which will benefit all the citizens of Guam. Bill 141, as it is currently drafted, does not promote competition in the banking industry. In fact, it contains restrictions that will reduce competition from the level currently provided under the laws of the Territory.

Bill 141 contains language that inhibits competition. The Committee should carefully review the provisions that:

1. Prohibit de novo branching by new out-of-state banks.
2. Prohibit acquisitions of bank branches or of banks less than five years old.
3. Continue to call ATM's bank "branches".
4. Restrict the number of branches that non-territorially chartered banks can operate on Guam.
5. Restrict the number of branches that a bank with assets greater than $2 billion can operate.
6. Require that a bank applying for a new branch employ a minimum of five people.

The effect of the restrictions contained in this bill 141, will mean that, at present, there is only one way that a new bank which desires to invest

in Guam will be able to do so: it will have to buy Bank of Guam or Citizen's Security Bank.

Our recommendation to this committee is to pass the "opt-in" bill, but do away with the restrictive provisions included in this law. Let's keep the territory open to new banks and allow banks that are already here to compete fairly and on an even playing field. Let the banks and their customers determine what is the proper number of branches for banks on Guam. Allow all the banks to establish ATM's in places they believe their customers want to see that convenience. And instead of making it difficult for new banks and businesses to come here, let us encourage them by creating an environment where they will have an equal opportunity to compete. Guam has done a great job in creating a competitive tourism industry and is now attempting to do the same in the captive insurance industry. Let's make sure all of our industries, including the banking industry, are provided with the same competitive environment.

The 23rd Guam Legislature heard arguments concerning defining ATM's as "branches". What was most compelling to the senators at that time was the argument by the Guam-chartered banks that they were not allowed access to the Hawaii market. The two Hawaii-chartered banks argued that Guam banks were and are permitted to open branches and ATM's in Hawaii. Reacting against the perceived exclusion by the State of Hawaii, the 23rd Guam Legislature chose to provide protection to the Guam-chartered banks by defining ATM's as branches.

Since that decision, Amerika Samoa Bank, from the Territory of American Samoa, has obtained approval and begun to open a branch in Hawaii, proving that all along that territorially-chartered banks have been permitted to branch, without limitation, in Hawaii. If the logic that compelled the 23rd Guam Legislature to limit ATM expansion on Guam has proven false, then the inclusion of ATM's in the definition of bank "branch" should also be closely examined. Incidentally, federal regulators recently eliminated all application and approval requirements for new ATM's for banks under their jurisdiction, preferring to let market forces determine where these customer conveniences should be located, and formally acknowledging that ATM's are not "branches".

If this committee is unwilling to adopt an "opt-in" law free of restrictions, we would recommend that the restrictions be limited to:

1. no de novo branching;
2. a 5-year age requirement;
3. no partial acquisitions;

and, that these restrictions be effective for only three years from the date of enactment of this law. The three year "sunset clause" will provide for an

adjustment period with a time specific deadline for those three restrictions to be lifted. This approach is consistent with many of the states, including Hawaii. We also recommend that the clauses defining ATM's as branches and the limitation on the number of branches operated by non - territorially chartered bank be eliminated.

As Guam approaches the 21st century, it has an unprecedented opportunity to take a giant step along the path of economic progress. That progress must include an attitude that no longer tolerates protectionism and favoritism in our economic decisions. If we take this step, it will create a vibrant and healthy economy, including a strong financial services sector. This committee will play an important role in creating an environment which fosters competition by passing an "opt-in" bill with as few restrictions as possible.

Guam needs off - island banks because it is a capital hungry economy. With only $1.3 billion in total bank deposits in the territory and over $2.4 billion in loans outstanding, it is clear that the non - Guam chartered banks are importing capital for the benefit of this economy. Bank of Hawaii, for example loans out $162 for each $100 we have on deposit, a loan to deposit rates of 162%.

For the sake of those senators who did not have an opportunity to review our testimony in opposition to the 23rd Guam Legislature's Bill 692, I have attached a copy of my letter dated September 17, 1996, to the Chairman of Ways and Means Committee of the 23rd Guam Legislature. Attached to that letter is draft legislation which offers a compromise "opt-in" solution including the three restrictions mentioned above. We would further recommend a "sunset" clause ending the effectiveness of the restrictions at some future known date.

Thank you for the opportunity to express our opinion on Bill 141.

Sincerely yours,

Thomas A. Grimes
Senior Vice President
West Pacific Division Manager

TG/lm
Attachments

Bank of Hawaii

September 17, 1996

The Honorable Francis E. Santos
Chairman
and Members of the Committee on
Ways and Means
Twenty-Third Guam Legislature
Agana, Guam 96910

RE: BILL 692

Mr. Chairman and Members of the Committee on Ways and Means:

My name is Tom Grimes and I am a senior vice president of Bank of Hawaii with the responsibility for managing Bank of Hawaii's operations in the West Pacific. With me to testify today are:

Tom Michels, Vice President and Guam Country Manager;

Roman Castro, Vice President and Manager of Guam Branches; and

Lorraine Okada, Vice President and Manager of Human Resources and Governmental Relations.

Thank you for the opportunity of testifying today on Bill 692. Bill 692 seeks to limit competition in banking on Guam and will have the effect of limiting future economic growth. We strongly recommend that you do not pass Bill 692.

We urge you, instead, to step back and consider Guam's economy and banking industry from the long term perspective. We believe Guam would be better off by encouraging competition in financial services, including a reconsideration of the current limit on the number of branches a non-Guam chartered bank is allowed to operate here. Guam has the potential to become a regional financial services center. The legislature has recently set the stage for this in the captive insurance market by passing legislation which will make Guam a more competitive place to operate captive insurance companies. The insurance industry needs an efficient banking industry with banks that have solid international correspondent networks. Let us not discourage that industry before it gets off the ground by closing the doors to any new banks that may wish to open here.

All throughout the U.S., barriers to banking are falling. As of August 12, 44 states and the District of Columbia have "opted in" to the interstate branching

provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Only one state, Texas, has "opted out" of interstate branching, and only until 1999. It is expected that the 5 remaining states will "opt in" on or before the mandatory conversion date of June 1, 1997. The Riegle-Neal law is the culmination of a national trend towards interstate branching which has been developing over the past decade. The purpose of the law was to create a more efficient and competitive U.S. banking system for the benefit of consumers and small businesses.

Many of the states which have "opted in" included restrictions on new banks seeking to branch into their states. These typically include prohibitions on "de novo" branching (the establishment of new branches), partial acquisitions, and the acquisitions of banks less than 5 years old. It is an accepted fact that most state legislatures included the restrictions to allow for an adjustment period, and that they will remove the restrictions within the next few years to allow interstate bank branching on a national level as it was originally envisioned by Congress.

Last year, during the discussions concerning ATM's and their status as "branches", a significant amount of time was spent on the issue of reciprocity between Guam and Hawaii. Some claimed that Guam-chartered banks were not permitted to establish a branch or ATM in Hawaii. Written proof was later given by the Hawaii Banking Commissioner that Guam-chartered banks were, and are, permitted to open branches in Hawaii, but that no Guam-chartered bank has ever applied. A copy of that letter, dated September 19, 1995, is attached to my written testimony for your reference.

Hawaii recently passed a law opting into interstate branching provisions of Riegle-Neal effective June 1, 1996. Specific provisions were included in that law to permit banks chartered in Guam, and other U.S. territories, to open branches in Hawaii. The law additionally provides those branches with retail deposit taking rights prohibited to other "foreign" banks. There is no requirement for a minimum asset size, though there is a requirement to keep $500,000 on deposit with an unaffiliated bank in the state. For the record, Bank of Hawaii strongly recommended that the Hawaii legislature opt in to interstate branching with no restrictions. Copies of correspondence to that effect is also attached to my written testimony.

Guam chartered banks are treated as "foreign" banks under the International Banking Act of 1978. Under that act, a "foreign" bank's powers to branch are governed by the state into which it first chooses to establish a branch. That state is referred to as its "home state." A Guam chartered bank whose home state is California, for example, will be guided by the laws of California should it seek to establish branches in other states. California has opted in to interstate branching, so any Guam chartered bank with California as its home state will be permitted to branch into any other state which has opted in.

The point of this is to make clear that Guam banks are permitted entry to Hawaii. Today, a Guam chartered bank may establish a branch in Hawaii under the Intra-Pacific Banking statute adopted by the state legislature in 1988. After

June 1, 1997, a Guam chartered bank may enter Hawaii directly under the new law by establishing a branch. Or it may enter indirectly through reciprocity with the "home state" of the Guam chartered bank that has chosen to branch to another U.S. state.

This rather lengthy explanation of the reciprocity issue is due to the fact that last year it became the sole focus of the ATM law discussions. It appeared that the Guam legislature voted in favor of the ATM restrictions based on the perception that Hawaii laws were written to keep Guam chartered banks out of Hawaii.

While we can prove to you that Guam chartered banks are permitted entry into Hawaii, reciprocity is not the issue that should be on the minds of those considering Bill 692. The far more important issue is the future of Guam's economy. Guam needs an open and competitive banking environment in order to encourage new capital and to promote economic growth. Bill 692 moves Guam's banking laws in exactly the wrong direction by prohibiting any new banks' entry. Bill 692 limits growth and the economic potential of our island. We should all be working together to make our banking system better, more efficient, and competitive on an international level.

Mr. Chairman, in closing, I would like to respectfully request the consideration by this committee of alternative legislation. A draft copy of a compromise bill is attached to my written testimony. That draft legislation proposes opening up Guam's banking industry to more competition, but it includes some restrictions, similar to those in the California and Hawaii laws, that will protect Guam-chartered financial institutions. It moves Guam in the direction of free competition in banking and offers a compromise which everyone should find acceptable.

Thank you again for the opportunity to testify against Bill 692.

Respectfully yours,

Thomas A. Grimes

Thomas A. Grimes
Senior Vice President
West Pacific Division Manager

BENJAMIN J. CAYETANO
GOVERNOR

KATHRYN S. MATAYOSHI
DIRECTOR

LYNN Y. WAKATSUKI
COMMISSIONER

PHONE (808) 586-2820
FAX (808) 586-2818

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF FINANCIAL INSTITUTIONS
1010 RICHARDS STREET
P. O. BOX 2054
HONOLULU, HAWAII 96805

September 19, 1995

Via Facsimile No. 011-671-632-1040
and First Class Mail

The Honorable Joseph T. Duenas
Director of Revenue & Taxation
and Commissioner of Banking
Insurance, Securities, Banking and
Real Estate Branch
Department of Revenue & Taxation
378 Chalan San Antonio
Tamuning, Guam 96911

Dear Mr. Duenas:

Re **Hawaii Laws Governing Intra-Pacific Banks**

We recently reviewed certain testimony that was filed in conjunction with the Guam Banking Board's hearing on the question of whether automated teller machines ("ATMs") should be considered branches under Guam banking law. Given the fact that there may be some question as to Hawaii law, we wanted to provide you with the following information on the Hawaii laws which would govern a Guam-chartered bank's status as an "intra-Pacific bank" and its ability to establish a branch or ATM in Hawaii.

The intra-Pacific banking provisions in Hawaii law are contained in Part IV, Article 5 of Chapter 412, the Code of Financial Institutions ("Code"), Hawaii Revised Statutes ("HRS").[1]

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[1] Under Hawaii's banking law prior to 1988, U.S. territories such as Guam were considered "foreign," and, therefore, Guam-chartered banks were subject to banking prohibitions applicable to foreign banks. In 1988, the provisions relating to intra-Pacific banks were enacted into law. Act 343, June 14, 1998, 14th Leg., Reg. Sess. The Legislature recognized that such legislation would "promote Hawaii's interest in the Pacific by creating an environment conducive to reciprocal banking business within the

Our interpretation of those laws in conjunction with the rest of the Code is detailed below, but in summary, we wish to emphasize the following points:

+ Since 1988, Hawaii's laws have provided for reciprocal banking rights for an intra-Pacific bank or its intra-Pacific bank holding company. The Hawaii State Legislature passed such legislation with the purpose of promoting Hawaii's interest in the Pacific by creating an environment conducive to reciprocal banking business within the Pacific Community.

+ Under §412:5-400, HRS, Guam is a "reciprocal region" because Guam's economy is based on the U.S. dollar and Section 30500.1 of the Government Code of Guam appears to authorize Hawaii banks to establish a branch on Guam if Hawaii laws afford Guam-chartered banks and Guam national banks reciprocal branching rights.

+ Since Guam is a "reciprocal region," Guam-chartered banks and Guam national banks and their holding companies would be allowed to enter Hawaii as intra-Pacific banks and intra-Pacific bank holding companies under §412:5-401, HRS.

+ Intra-Pacific banks are treated as "Hawaii financial institutions" under Hawaii law, and as such, intra-Pacific banks have powers equivalent to those of Hawaii-chartered banks, including the power to establish branches and ATMs in Hawaii.

Attached to this letter are copies of the cited sections of the Hawaii Revised Statutes. By mail, we will also be providing you with a copy of the entire Code of Financial Institutions.

HAWAII LAWS GOVERNING INTRA-PACIFIC BANKS

An intra-Pacific bank is defined in Section 412:5-400, HRS, as follows:

Pacific community of nations." Sen. Stand. Comm. Rep. No. 2561, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1084 (1988). In 1993, the intra-Pacific bank provisions were recodified, without substantive change, as part of a comprehensive recodification of Hawaii's banking laws. H.R.S. §§412:5-400 - 412:5-407.

> "Intra-Pacific bank" is a depository institution or a banking company (1) engaged in the type of business permitted to banks chartered by this State, (2) whose home office is located in a reciprocal region, (3) a majority of whose deposits together with the deposits of its subsidiaries and affiliates are held in a reciprocal region, and (4) which is not directly or indirectly owned or controlled by any holding company other than an intra-Pacific bank holding company."

Further, the Code defines a "depository institution" in Section 412:1-109, HRS, as:

> "Depository institution" means a financial institution that is authorized to accept deposits under its chartering or licensing authority and includes a bank, savings bank, savings and loan association, depository financial services loan company, credit union, or intra-Pacific bank."

Any depository institution or banking company that meets the definition of an intra-Pacific bank and is operating in Hawaii as an intra-Pacific Bank is then given the same powers and duties as Hawaii chartered banks pursuant to Section 412:5-407, HRS, which provides that:

> "An intra-Pacific bank engaged in banking in this State shall have all powers and duties allowed by and imposed on all banks chartered by this State, including without limitation the authority to accept deposits, make loans, borrow money and make investments, and the duty to file reports with the commissioner and insure its deposits in this State with a federal agency. An intra-Pacific bank shall also be subject to and liable for all fines and penalties provided by this chapter."

In further support of our interpretation that intra-Pacific banks have the same powers and authority as Hawaii-chartered banks is the definition of a Hawaii financial institution contained in Section 412:1-109, HRS, which states in part:

> "Hawaii financial institution" means a corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company, and includes a corporation, mutual savings and loan association or credit union existing and chartered as a Hawaii financial institution or licensed

> to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, **or intra-Pacific bank.**" (Emphasis added.)

It is our interpretation of the above sections that, among the powers and duties allowed to and imposed on intra-Pacific banks, would be the same branching rights and the ability to open ATMs as provided to Hawaii financial institutions.

Hawaii's Laws Governing Branching by Intra-Pacific Banks

Section 412:5-401(1), HRS, provides that an intra-Pacific bank may engage in business in Hawaii through one or more branches, subject to the prior approval of the Commissioner of Financial Institutions ("Commissioner"). There are no restrictions on the number of branches that can be established in Hawaii.

In order to establish a branch in Hawaii an intra-Pacific bank must obtain the Commissioner's prior approval. The applicant must file an application to establish a branch, together with an application fee of $500. The applicant may use the FDIC branch application form, but must provide all of the information required under Sections 412:3-503(b) and 412:5-402(a), HRS.

In order to approve the branch application, the Commissioner must determine that:

(1) The laws of the reciprocal region provide for reciprocal treatment of Hawaii-chartered banks;

(2) The applicant's controlling persons are of good moral character and sound financial standing, the applicant's management is competent and sufficiently experienced, the applicant is likely to comply with all applicable laws, and the establishment of the branch will serve the public convenience and advantage; and

(3) The applicant meets the paid-in capital and surplus requirement applicable to Hawaii-chartered banks of no less than $5 million.

(See, §§412:5-402(b), 412:5-406, and 412:3-209, HRS).

Hawaii's Laws Governing Opening of ATMs by Intra-Pacific Banks

ATMs are not considered branches pursuant to the provisions of Section 412:3-501, HRS, and there are no restrictions on the number of ATMs that can be established in Hawaii by Hawaii financial institutions, and therefore by intra-Pacific banks. The opening of ATMs by Hawaii financial institutions, including by intra-Pacific banks, only requires that the institution notify the Commissioner within 30 days of the opening of the ATM, and the approval of the Commissioner is not required. The notice must include the following information: (1) the location of the ATM; (2) a description of the type of functions which the ATM will perform; and (3) the date or anticipated date of opening the ATM. (See, §412:3-506, HRS.)

GUAM BANKS AS INTRA-PACIFIC BANKS UNDER HAWAII LAWS

A Guam chartered bank or Guam national bank ("Guam bank"), or another type of Guam financial institution would constitute an intra-Pacific bank if it met all of the criteria for an "intra-Pacific bank" contained in the definition cited above. (See, §412:5-400, HRS.)

The first criteria would require that the depository institution or banking company be engaged in the type of business permitted to banks chartered by this State. Parts I through III of Article 5 of Chapter 412, HRS, contain the specific provisions applicable to banks in Hawaii and generally provide for the acceptance of deposits; the lending, investing and borrowing of money; and other activities usual or incidental to the business of banking including the issuance of letters of credit, the acceptance of drafts and bills of exchange, and the authority (subject to the Commissioner's approval) to engage in the trust business. Any Guam depository institution that was not a Guam bank would need to describe its activities and demonstrate that its activities were of the type permitted to Hawaii chartered banks.

The definition of "reciprocal region" is, of course, central to whether or not a Guam bank would constitute an intra-Pacific bank under Hawaii Law under the second through fourth criterion of the definition of an intra-Pacific bank. Guam would constitute a reciprocal region if: (1) its economy is based on the United States dollar; and (2) its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch, or acquire the assets or control of, or merge with a bank or bank holding company in Guam under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations,

acquisitions, change of control and mergers of banks and bank holding companies. (See, §412:5-400, HRS.)

We understand that there are two key statutory provisions under Guam law which reflect Guam's position with respect to reciprocity: Section 30500.1 of the Government Code of Guam[2] and Section 30900(a) of the Government Code of Guam[3]. Read together, it is our interpretation of these provisions that Guam laws allow state banks (such as Hawaii-chartered banks) to establish branches on Guam, but only if the laws of their home state grant reciprocal branching rights to Guam-chartered banks and Guam national banks.

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[2] Section 30500.1 of the Government Code of Guam provides, in pertinent part, as follows:

> (a) State or National Bank: Prohibition Against Transacting Business. No state or national bank shall transact business in Guam. This Subsection shall not be deemed to prohibit:
>
> * * *
>
> (4) Any state bank which maintains an agency or branch in Guam, pursuant to Subsection (c) of this Section.
>
> * * *
>
> (c) State Banks; Establishment. No state bank shall establish or maintain an agency or branch office in Guam unless the state where such bank is domiciled or incorporated permits banks organized under the laws of Guam and national banks headquartered in Guam, to establish and maintain in such state, offices substantially equivalent to agencies or offices substantially equivalent to branch offices.
>
> (d) Application. Any state or national bank desiring to establish or maintain an agency or branch office in Guam shall make application for approval by the Board on such forms as may be designated by the Board. The application shall contain such information as the Board may require.
>
> (e) This Section shall not apply to those state or national banks licensed to engage in banking in Guam prior to the effective date of this Act.

[3] Section 300900 (a) of the Government Code of Guam would prohibit a Hawaii-chartered bank from establishing "more than two branches on Guam, except as may be provided by reciprocal arrangement" with Hawaii.

The two-branch limitation contained in Section 30900(a) of the Government Code of Guam would appear to be inapplicable, so long as the state bank's home jurisdiction would permit a Guam-chartered bank or Guam national bank to branch in that jurisdiction without limitation.

We would appreciate your confirmation or further clarification of our interpretation that Hawaii law meets the reciprocity test in Guam law. Based on this interpretation of Guam law, it is our interpretation of Hawaii law that since Hawaii's intra-Pacific banking laws allow for reciprocal branching rights to Guam banks that are intra-Pacific banks (see discussion in the section above), Guam law meets the reciprocity test contained in Hawaii law and that Guam is a reciprocal region under Section 412:5-400, HRS.

We therefore conclude that under Hawaii law:

(1) Guam would constitute a reciprocal region,

(2) Assuming a Guam bank would meet the two criteria of the intra-Pacific bank definition relating to holding of the majority of its deposits in a reciprocal region and not being owned or controlled by a holding company which is not an intra-Pacific holding company, the Guam bank would constitute an intra-Pacific bank; and

(3) Guam banks, as intra-Pacific banks, would have powers equivalent to those of Hawaii-chartered banks, including the power to establish branches and ATMs in Hawaii.

HAWAII LAWS GOVERNING FOREIGN FINANCIAL INSTITUTIONS AND FOREIGN BANKS ARE NOT APPLICABLE TO INTRA-PACIFIC BANKS

As an intra-Pacific bank, a Guam bank would also constitute a Hawaii financial institution under Hawaii law. (See, §412:1-109, HRS.) Accordingly, the provisions of Hawaii law governing foreign financial institutions and foreign banks which are presently contained in §412:3-502, HRS and Article 5A of Chapter 412, HRS, would not be pertinent to the consideration of the permissible activities of a Guam bank which was considered an intra-Pacific bank under Chapter 412, HRS.

Notwithstanding this interpretation, if a Guam bank could not qualify as an intra-Pacific bank due to either the majority of its deposits not being held in a reciprocal region or being owned by a holding company which was not an intra-Pacific holding company, the Guam bank could be considered a "foreign bank" under Article 5A of

Chapter 412, HRS and could have the more limited powers available under that Article.

NO APPLICATIONS RECEIVED FROM GUAM BANKS

From time to time, we have received informal inquiries about our laws from Guam-chartered banks. We have not received any request for a determination as to whether a specific Guam-chartered bank would constitute an intra-Pacific bank under Hawaii law, nor have we received any application from a Guam-chartered bank for authority to engage in banking in Hawaii.

Generally, requests for interpretations of our laws are in writing and the inquirer provides us with the facts of the situation, the specific question, the inquirer's position on the question, and any authority for that position. Our position on any application we receive is that we will process it in accordance with our laws and rules, and any application which meets the statutory and regulatory requirements will be approved. We would be pleased to receive any such request or application.

We hope this information proves helpful to you. Should you have questions, or desire additional information, please do not hesitate to contact us. You can call Stanley K. Tanaka, our Licensing Branch Manager, or me at (808) 586-2820. Commissioner Lynn Y. Wakatsuki will be back in the office in mid-October.

Sincerely,

Lynne Himeda

Lynne Himeda
Acting Commissioner

LH:kk

Attachments

cc: AI:95-16
Guam Supervisors File

Bank of Hawaii

GILBERT K. T. TAM
Senior Vice President

February 21, 1996

TO: The Honorable Milton Holt, Chair
The Honorable Les Ihara, Jr., Vice Chair
and Members of the Senate Committee on Consumer Protection

FROM: Gil Tam
Senior Vice President, Governmental Affairs
Bank of Hawaii

RE: Testimony in Support of SB 2724 Relating to the Code of Financial Institutions

Thank you for the opportunity to offer testimony on SB 2724. Bank of Hawaii is in full support of SB 2724, and urges its passage, as written, for the State of Hawaii to "opt in" to interstate branching without restriction.

The Riegle-Neal Interstate Banking and Branching Efficiency Act was passed by the U.S. Congress in 1994. The Act provided for interstate banking to be effective on September 29, 1995, and for interstate branching to be effective on or before June 1, 1997.

With regard to the interstate banking part of the Act, states had virtually no say on this matter. This past September, therefore, interstate banking went into effect, and out of state bank holding companies may now acquire banks in the State of Hawaii. Accordingly, Hawaii bank holding companies may acquire banks in other states and U.S. jurisdictions.

SB 2724 deals with the second part of the Act, interstate branching, and states have a say in whether they will allow interstate branching. A state may elect to "opt in" or "opt out" of interstate branching.

If a state "opts out," it is deciding to not allow banks from out of state to branch in its state. Accordingly, it is deciding to not allow its local banks to branch out in other states (including U.S. trust territories and possessions). So far, only one state has "opted out," Texas, and we do not anticipate any other state electing to "opt out."

If a state "opts in," it is deciding to allow banks from other states (and U.S. jurisdictions) and foreign countries to operate branches in its state. Accordingly, it is deciding to allow its local banks to operate branches in other states and U.S. jurisdictions.

Additionally, if a state decides to "opt in," it may determine whether it will allow mainland and foreign banks to establish branches by partial acquisition (the purchase of one or more branches) and/or by "de novo" (just start up a branch). Additionally, a state may determine whether it will place an age restriction of up to five years before a local financial institution may be acquired in whole or in part.

SB 2724 elects "opting in" for the State of Hawaii, and allows for interstate branching by partial acquisition and "de novo." SB 2724 also places no age requirements before acquisition may occur, in whole or in part.

We believe it is important for the State of Hawaii to "opt in" to interstate branching without restriction. If restrictions are established, it may serve to provide token protection for local banks from outside competition. On the other hand, local banks may be subject to those same restrictions in other states and U.S. jurisdictions should they choose to establish branches elsewhere.

In Hawaii, several financial institutions already have banking operations in other states and U.S. jurisdictions. Any restrictions in Hawaii could adversely affect these banks and the options available to them outside the State. Perhaps more importantly, the banking industry has gone through some extensive changes in recent years. The industry must become more efficient in order to meet competitive pressures. The Riegle-Neal Act was formulated to encourage competition and growth by rationalizing interstate banking and branching issues. Therefore, we believe it is important to support the intent of the national legislation and promote a more efficient marketplace, ultimately, for the benefit of the consumer.

Again, we are in full support of SB 2724, and we urge the Committee to pass it as written. Thank you.

Respectfully Submitted,

Bank of Hawaii

GILBERT K. T. TAM
Senior Vice President

February 19, 1996

TO: The Honorable Ron Menor, Chair
The Honorable Terry Yoshinaga, Vice Chair
and Members of the House Committee on Consumer
Protection & Commerce

FROM: Gil Tam
Senior Vice President, Governmental Affairs
Bank of Hawaii

RE: Testimony in Support of HB 3393 Relating to the Code of Financial Institutions

Thank you for the opportunity to offer testimony on HB 3393. Bank of Hawaii is in full support of HB 3393, and urges its passage, as written, for the State of Hawaii to "opt in" to interstate branching without restriction.

The Riegle-Neal Interstate Banking and Branching Efficiency Act was passed by the U.S. Congress in 1994. The Act provided for interstate banking to be effective on September 29, 1995, and for interstate branching to be effective on or before June 1, 1997.

With regard to the interstate banking part of the Act, states had virtually no say on this matter. This past September, therefore, interstate banking went into effect, and out of state bank holding companies may now acquire banks in the State of Hawaii. Accordingly, Hawaii bank holding companies may acquire banks in other states and U.S. jurisdictions.

HB 3393 deals with the second part of the Act, interstate branching, and states have a say in whether they will allow interstate branching. A state may elect to "opt in" or "opt out" of interstate branching.

If a state "opts out," it is deciding to not allow banks from out of state to branch in its state. Accordingly, it is deciding to not allow its local banks to branch out in other states (including U.S. trust territories and possessions). So far, only one state has "opted out," Texas, and we do not anticipate any other state electing to "opt out."

If a state "opts in," it is deciding to allow banks from other states (and U.S. jurisdictions) and foreign countries to operate branches in its state. Accordingly, it is deciding to allow its local banks to operate branches in other states and U.S. jurisdictions.

Additionally, if a state decides to "opt in," it may determine whether it will allow mainland and foreign banks to establish branches by partial acquisition (the purchase of one or more branches) and/or by "de novo" (just start up a branch). Additionally, a state may determine whether it will place an age restriction of up to five years before a local financial institution may be acquired in whole or in part.

HB 3393 elects "opting in" for the State of Hawaii, and allows for interstate branching by partial acquisition and "de novo." HB 3393 also places no age requirements before acquisition may occur, in whole or in part.

We believe it is important for the State of Hawaii to "opt in" to interstate branching without restriction. If restrictions are established, it may serve to provide token protection for local banks from outside competition. On the other hand, local banks may be subject to those same restrictions in other states and U.S. jurisdictions should they choose to establish branches elsewhere.

In Hawaii, several financial institutions already have banking operations in other states and U.S. jurisdictions. Any restrictions in Hawaii could adversely affect these banks and the options available to them outside the State. Perhaps more importantly, the banking industry has gone through some extensive changes in recent years. The industry must become more efficient in order to meet competitive pressures. The Riegle-Neal Act was formulated to encourage competition and growth by rationalizing interstate banking and branching issues. Therefore, we believe it is important to support the intent of the national legislation and promote a more efficient marketplace.

Again, we are in full support of HB 3393, and we urge the Committee to pass it as written. Thank you.

Sincerely,

ANTHONY A. LEON GUERRERO
President
and
Chief Executive Officer

Bank of Guam

"The People's Bank"

MEMBER OF THE FEDERAL
DEPOSIT INSURANCE CORP.

P. O. Box BW
Agana, Guam 96910
Tel 472-8865/6/7

February 24th, 1997

Vice Speaker Anthony Blaz
Chairman, Committee on Finance & Taxation
Twenty-Fourth Guam Legislature

Dear Senator Blaz:

I am here to testify in support of Bill 141, relating to opting in to interstate branching, which is being heard before your Committee today.

As you might expect, I would still prefer that Guam take a positive stance in the development of its local financial industry, and that this Legislature would decide to opt out of interstate branching. Unfortunately, it appears that this cannot be done, and that a variety of short-term political considerations dictate that we make long-term decisions which, I believe, will ultimately set us back in our efforts to build a strong and self-sufficient economy. It pains me that the true interests of our community and its banking industry will be sacrificed in the interests of political expediency, but I understand that decisions must be made and that our Senators are sometimes faced with some difficult choices when weighing all sides of an issue.

Therefore, although I do not particularly like some of the provisions of the Bill before you, I must concede that it is something I can live with. I just hope that we do not all live to regret that we will be surrendering some of the progress that we have made over the past twenty-five years if Bill 141 passes into law. I therefore respectfully request that Bill 141 be passed into law without any modification that would further strip it of its remaining value. In particular, I ask that you retain Section 15 of the Bill, which will repeal and reenact Section 106601 of the Government Code and ensure in its Paragraph (b) the continued existence of smaller community banks and competition, as opposed to the proliferation of consolidation, monopolies and reduced services.

Thank you for the opportunity to present my views on this matter.

Respectfully submitted,

Anthony A. Leon Guerrero
President & CEO

TESTIMONY OF FIRST HAWAIIAN BANK
TO THE COMMITTEE ON _____
TWENTY-FOURTH GUAM LEGISLATURE ON BILL NO. ~~XXX~~ ~~(COR)~~
141

Mr. Chairman and members of the Committee, First Hawaiian Bank submits this as its preliminary testimony and comments on this bill, the basic intent of which is to severely restrict interstate branch banking and to allow interstate mergers of banks and bankholding companies ~~on~~ in Guam with certain limitations. Our comments are preliminary because we received the bill in its current form only last Thursday evening. We will continue our review of the bill and intend to comment further in the coming days.

Under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, interstate banking is now the law. The states and territories may limit interstate banking through merger and acquisition only as authorized by Riegle-Neal. We have serious concerns as to the legality of the restrictions contained in section 106601 of this bill. These restrictions appear to limit to four the number of branches which could be maintained in Guam by a bank with assets, wherever located, in excess of 2 billion dollars. An off-site ATM would constitute a branch for this purpose. This provision is clearly intended to discourage interstate mergers. This intent appears to directly contradict the intent of Riegle-Neal.

Equally important is that when this limitation on branching in general is viewed together with the ban on the establishment of de novo branches, the future banking options of Guam's consumers will be severely curtailed. First Hawaiian Bank believes that opting in to Riegle-Neal with ~~maximum~~ minimum restrictions is in the best interest of Guam's consumers and economy. Opting in will increase competition in the banking industry, encourage improvements in services offered to banking customers and increase the availability of capital to fuel the economy of the island. Opting out will not.

Riegle-Neal presents extremely important issues for this island and its future. We encourage this Committee to carefully deliberate on this bill. It's implications for the future of everyone living and doing business in Guam are great.

TESTIMONY ON BILL 141
BEFORE THE COMMITTEE ON FINANCE & TAXATION
BY PHILIP J. FLORES
ON FEBRUARY 24, 1997

MR. CHAIRMAN, MEMBERS OF THE TWENTY FOURTH GUAM LEGISLATURE, I AM PHILIP FLORES, PRESIDENT OF GUAM SAVINGS AND I COME HERE THIS AFTERNOON TO TESTIFY IN FAVOR OF THE PASSAGE OF BILL 141, AN ACT TO AMEND THE GUAM BANKING CODE IN ORDER TO ALLOW GUAM TO OPT-IN TO THE REIGLE NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994.

WE PREFACE OUR ENDORSEMENT OF BILL 141 ON THE REMOVAL OF CERTAIN LANGUAGE CONTAINED IN TWO SECTIONS OF THE BILL WHICH LANGUAGE IF INCLUDED WOULD BE DAMAGING TO OUR ISLAND'S ECONOMY AND IN CONFLICT WITH THE BEST INTERESTS OF THE SHAREHOLDERS OF GUAM SAVINGS.

FURTHER THE TWO SECTIONS IN QUESTION ARE CLEARLY UNCONSTITUTIONAL AND IN CONFLICT WITH BOTH THE LETTER AND THE SPIRIT OF THE REIGLE NEAL ACT AND THUS WOULD RIGHTLY FACE A CERTAIN VETO ON THOSE GROUNDS.

THE TWO AREAS TO WHICH I REFER ARE AS FOLLOWS:

SECTION 15 (a), LINES 4 THROUGH 9 ON PAGE 15 WHICH READ AS FOLLOWS:

> NOTWITHSTANDING THE FOREGOING, NO BANK HAVING ASSETS WHEREVER LOCATED IN EXCESS OF TWO BILLION DOLLARS NOR ANY BANK WHICH IS AN AFFILIATE OF A BANK HOLDING COMPANY HAVING WITH ITS AFFILIATES, ASSETS WHEREVER LOCATED IN EXCESS OF 2 BILLION DOLLARS SHALL ESTABLISH ANY ADDITIONAL BRANCH IN GUAM PURSUANT TO THE PROVISIONS OF THIS SECTION, IF ON THE ESTABLISHMENT OF SUCH ADDITIONAL BRANCH SUCH BANK WOULD HAVE MORE THAN FOUR BRANCHES IN GUAM.

SECTION 15 (d) LINES 17 THROUGH 22 ON PAGE 19 AND LINES 1 AND 2 ON PAGE 20, A PORTION OF WHICH READS AS FOLLOWS:

> EACH BRANCH ESTABLISHED UNDER THE PROVISIONS OF THIS SECTION SHALL HAVE...(ii) NOT LESS THAN FIVE FULL TIME EMPLOYEES INCLUDING THE MANAGER...

AGAIN, THE ABOVE LANGUAGE IS UNCONSTITUTIONAL AND IN VIOLATION OF REIGLE NEAL.

ARGUMENTS ABOUT CONSTITUTIONALITY ASIDE, REALIZE WE ALREADY HAVE SEVERAL BANKS IN GUAM WELL OVER THE 2 BILLION DOLLAR LIMIT, ONE WITH ASSETS IN EXCESS OF $240 BILLION AND ANOTHER WITH ASSETS IN EXCESS OF $1 TRILLION.

THE BANK WITH OVER $240 BILLION IN ASSETS IS A NATIONALLY CHARTERED BANK.

BECAUSE IT IS NATIONALLY CHARTERED GUAM LAW HAS NO CONTROL OVER ITS ABILITY TO BRANCH THROUGHOUT GUAM EVEN IF THE OFFENDING LANGUAGE IS INCLUDED.

SENATORS, IT IS UNFAIR TO GIVE A NATIONALLY CHARTERED BANK AN ADVANTAGE OVER A STATE CHARTERED BANK.

FURTHER, AT GUAM SAVINGS, WE CURRENTLY OPERATE ONE OF OUR OFFICES WITH LESS THAN 5 FULL TIME EMPLOYEES.

LEGISLATION WHICH WOULD FORCE US TO INCREASE OUR COST OF OPERATIONS WITH NO INCREMENTAL BENEFIT TO OUR CUSTOMERS WOULD INCREASE THE COST OF BANKING TO OUR CUSTOMERS.

WE BELIEVE THE GOVERNMENT OF GUAM WOULD ALSO BE SENDING A VERY SCARY MESSAGE TO THE PRIVATE SECTOR BY MANDATING HOW MANY EMPLOYEES A PRIVATE COMPANY MUST HIRE AT A BANK.

OTHERWISE WE WHOLEHEARTEDLY ENDORSE BILL 141.

EXCEPT FOR THE TWO NOTED SECTIONS OF LANGUAGE, BILL 141 IS STRIKINGLY SIMILAR TO OPT-IN LEGISLATION PASSED IN MOST OF THE STATES OF THE UNION, INCLUDING CALIFORNIA AND HAWAII.

THE BILL DOES PROVIDE FOR SOME RESTRICTIONS STRICTLY PERMITTED IN REIGLE NEAL. THESE ARE THE SAME RESTRICTIONS ADOPTED BY, AMONGST OTHERS, CALIFORNIA AND HAWAII.

WE URGE THE PASSAGE OF BILL 141, WITH THE REMOVAL OF THE LANGUAGE CITED ABOVE.

TO DO SO IS IN THE BEST INTERESTS OF OUR ISLAND.

I AM PREPARED TO ANSWER QUESTIONS AT YOUR PLEASURE.

THANK YOU.

CARL T.C. GUTIERREZ, Governor
MADELEINE Z. BORDALLO, Lieutenant Governor

DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM

JOSEPH T. DUENAS, Director CARL E. TORRES, Deputy Director

FEB 24 1997

Honorable Anthony C. Blaz
Vice Speaker
Chairman, Finance and Taxation Committee
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Chairman and Members of the Committee:

Our Office received a copy of Bill 141 last Friday. In attempting to analyze the Bill it was noted that certain pages were missing and one page was not correct. We obtained a corrected copy of the Bill this morning and started our first review.

The subject matter of this Bill is similar to Bill 692 considered by the Twenty-Third Legislature. However, this is a complex Bill. It establishes Guam's position on Riegle-Neal Interstate and Branching Efficiency Act of 1994. The previous Bill considered by the Guam legislature "opted out" of Riegle-Neal. The Legislature in Bill 141 states its intent is to "opt-in" Riegle-Neal. The language used states: "It is the intent of the Guam Legislature to opt-in early to interstate mergers pursuant to the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act...and to restrict interstate branching pursuant to the provisions of such Act".

Riegle-Neal requires that States and Territories must specifically "opt-out" or they will be "opted-in". Riegle-Neal prohibits certain discriminatory acts against "out of state" banks in interstate branching. For this reason more time is needed to examine the language of this Bill to see if its language is adequate to accomplish the stated intent of the Legislature.

The proposed legislation makes significant, though needed, changes to our present law. Different chapters of the Banking Act define the various terms differently. Time is needed to analyze the definitions as well as other provisions of this Bill. The Bill must be carefully studied to assure that the amended provisions do not conflict with each other as well as Riegle-Neal and other federal and local law.

This is an extremely important piece of legislation and it is imperative that due diligence be exercised so that the policy effect of this legislation accomplishes the stated goals of Guam in becoming a regional financial center for the Western Pacific.

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For the reasons stated above, I would humbly ask for additional time of at least one week to provide thorough analysis of Bill 141 and its effect on present and future banking practices on Guam.

Your patience and understanding is appreciated.

Sincerely,

JOSEPH T. DUENAS

CARL T.C. GUTIERREZ, Governor
MADELEINE Z. BORDALLO, Lieutenant Governor

DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM

JOSEPH T. DUENAS, Director CARL E. TORRES, Deputy Director

FEB 28 1997

The Honorable Anthony C. Blaz, Chairman
Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96932

Dear Mr. Chairman and Members of the Committee:

My name is Joseph T. Duenas. I am the Director of the Department of Revenue and Taxation and the Ex-Officio Banking Commissioner for the Territory of Guam.

In addition to the previous written testimony I have submitted before this Committee I would like to take this opportunity to submit additional written testimony on Bill No. 141 for your consideration.

Mr. Chairman, we believe that certain sections or provisions of Bill 141 appear to be inorganic and/or unconstitutional. With the deletion of the following provisions, it is basically a status quo bill. While the bill opts us in it essentially reverts us back to the current banking situation.

Section 6. Section 106301 of the Government Code (Guam Banking Code) is amended by amending paragraph (6) and by adding the following new paragraphs (9), (10), (11) and (12) to read as follows:

(6) National Bank means a bank with a charter granted under the National Bank Act by the Office of the Comptroller of the Currency with its **main office in Guam.**

There is serious questions concerning such a limitation or restriction on National Banks. We do not think that you can force or restrict a National Bank from having its main office elsewhere. The powers and limitations on National Banks are governed by federal law and regulations. If our local law creates prohibitions against acts authorized by federal law or the regulations of the Controller General then federal law would prevail.

Section 15. Section 106601 of the Government Code (Guam Banking Code) is hereby repealed and reenacted to read:

Section 106601. Branch Banks.....(b) Notwithstanding the foregoing, no bank having assets wherever located in excess of two billion dollars nor any bank which is affiliate of a bank holding company having with its affiliates, assets wherever located in excess of 2 billion

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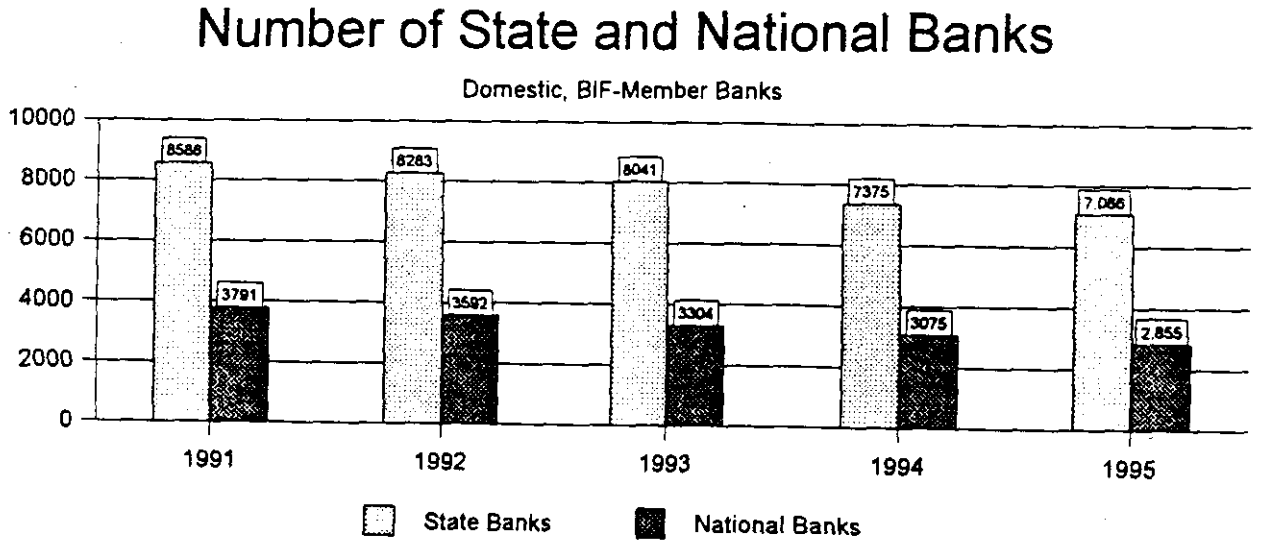
dollars shall establish any additional branch in Guam pursuant to the provisions of this section, if on the establishment of such additional branch such bank would have more than four branches in Guam.

(d) Each branch established under the provisions of this section shall have (i) a manager who is bona fide resident of the territory of Guam, and (ii) not less than five full time employees including the manager. The Commissioner shall not approve an application to establish a branch under this section unless it is shown to the satisfaction of the Commissioner that such branch shall meet the requirements of this subsection, and the Commissioner shall direct the closure of any branch established under this section which the Commissioner finds is not operated in compliance with the provisions of this subsection. This subsection shall not apply to any branch which consists solely of a customer communications terminal.

Not only are these provisions questionable from a constitutional perspective but they do not meet the safe and sound banking practices required in good banking regulations and laws. In addition such provisions would, for all practical purposes, eliminate large banks from establishing operations on Guam. This would severely limit competition and thus the banking consumer would be the big loser. This provision by eliminating the ability of large out-of-state banks acquiring local banks would devaluated the market value of the shares of our local banks.

Lastly, I would point out that consolidation of the banking industry has been occurring even prior to the implementation of the 1994 Riegle-Neal Interstate Banking and Branching Efficiency Act (see chart).



While 1995 was a year of transition, as states began to implement the 1994 Riegle-Neal Interstate Banking and Branching Efficient Act, the industry continued to consolidate, although

not as rapidly as in recent years. The total number of banks at year-end was 9,941: a 4.9% decline from the previous year, but a slowing of 1994's consolidation rate of 7.9%.

From discussions with various members of the banking community I was impressed that, with the exception of two or three provisions, all of the Guam banking community supports this legislation except one bank. Although, as a regulator I would prefer a different approach to certain areas in this Bill overall, if the above concerns are addressed, I fully support the passage of this Bill.

Sincerely,

JOSEPH T. DUENAS

DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM

MADELEINE Z. BORDALLO, Lieutenant Governor
JOSEPH T. DUENAS, Director CARL E. TORRES, Deputy Director

FEB 28 1997

Honorable Anthony C. Blaz
Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Senator Blaz:

I thought the enclosed briefing papers on banking might be helpful for your committee members and fellow senators as we address an ever growing and evolving banking industry in the global economy we live in.

Although our Island may be viewed as a small community/economy by Mainland standards, we are really more of a regional economy and I believe we will play a vital role as a bridge between the U.S. economy and the ever emerging and dynamic Asia/Pacific economy.

As always, the Department looks forward to a continuing dialogue with you and your committee on these and other matters.

Sincerely,

JOSEPH T. DUENAS
Director

Enclosures

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What Is a Bank?

"Bank" is a term people use broadly to refer to many different businesses. What you think of as your "bank" may be a commercial bank, a savings and loan association, a savings bank, or a credit union.

When people discuss the financial services industry, however, *bank* means "commercial bank," and a commercial bank is a specific, unique institution.

The Commercial Bank

The official definition of commercial bank is a privately-owned institution that accepts demand deposits and makes commercial loans. Demand deposits are money people leave in an institution with the understanding that they can get it back at any time. Commercial loans are simply loans to businesses. This action of taking deposits and making loans is called *financial intermediation*. A bank's business, however, does not end there.

Most people and businesses pay their bills with bank checking accounts, placing banks at the center of our payments system. Banks are the major source of consumer loans -- loans for cars, houses, education -- as well as lenders to businesses, especially small businesses. However, banks' role in lending to businesses has been shrinking.

Commercial banks now vigorously compete with securities firms, mutual funds, and insurance companies for the funds of savers; and banks can no longer rely on traditional loans as their primary source of growth and profitability. To a greater extent than ever before, nonbanking firms are offering financial products that were once the exclusive domain of banks. For example, securities firms offer cash management accounts that substitute for commercial bank deposits and they issue credit cards. Securities firms are also active in making commercial loans.

Historically, banks are often described as the engines of an economy, in part because of their deposit taking and lending functions, but also because of the major role banks play as instruments of the government's monetary policy. Unlike nondepository institutions, banks actually *create* money.

How Banks Create Money

Banks can't lend out all the deposits they collect, or they wouldn't have funds to pay out to depositors. Therefore, they keep *primary* and *secondary reserves*. Primary reserves are cash, deposits due from other banks, and the reserves required by the Federal Reserve System. Secondary reserves are securities banks purchase on the open market, which may be sold to meet short-term cash needs. These securities are usually government bonds of

some kind. Federal law sets requirements for the percentage of deposits a bank must keep on reserve, either at the local Federal Reserve Bank or in its own vault. Any money a bank has on hand after it meets its reserve requirement is its *excess reserves*.

It's the excess reserves that create money. This is how it works (using a theoretical 20% reserve requirement): You deposit $500 in YourBank. YourBank keeps $100 of it to meet its reserve requirement, but lends $400 to Ms. Smith. She uses the money to buy a car. The Sav-U-Mor Car Dealership deposits $400 in its account at TheirBank. TheirBank keeps $80 of it on reserve, but can lend out the other $320 as its own excess reserves. When that money is lent out, it becomes a deposit in a third institution, and the cycle continues. Thus, in this example, your original $500 becomes $1,220 on deposits in three different institutions. This phenomenon is called the *multiplier effect*. The size of the multiplier depends on the amount of money banks must keep on reserve.

The Federal Reserve can contract or expand the money supply by raising or lowering banks' reserve requirements. Banks themselves can contract the money supply by increasing their own reserves to guard against loan losses or meet sudden cash demands. A sharp increase in bank reserves, for any reason, can create a "credit crunch" by reducing the amount of money a bank has to lend.

How Banks Make Money

Although banks are important tools of public policy, they are privately-owned, for-profit institutions. Banks are owned by stockholders; the stockholders' stake in the bank forms most of its *equity capital*, a bank's ultimate buffer against losses. At the end of the year, a bank pays some or all of its profits to its shareholders in the form of dividends. The bank may retain some of its profits to add to its capital. Stockholders may also choose to reinvest their dividends in the bank.

Banks earn money in three ways:

- They make money from what they call the *spread*, the difference between the interest rate they pay for deposits and the interest rate they receive on the loans they make.
- They earn interest on the securities they hold.
- They earn fees for customer services, such as checking accounts, financial counseling, and loan servicing.

Banks earn an average of just over 1% of their assets (loans and securities) every year.

A Short History

The first American banks appeared early in the 18th century, to provide currency to colonists who needed a means of exchange. Originally, banks only made loans and issued notes for money deposited. Checking accounts appeared in the mid-19th century, the first of many new bank products and services. These now include credit cards, automatic teller machines, NOW accounts, individual retirement accounts, home equity loans, and a host of other financial services.

Many financial institutions can now perform some banking functions. Banks compete with savings and loans, savings banks, credit unions, financing companies, investment banks, insurance companies and many other financial services providers. Some experts claim that banks are becoming obsolete, but banks still serve vital economic goals. They continue to evolve to meet the changing needs of their customers, as they have for the past two hundred years. If banks did not exist, we would have to invent them.

Banks and Public Policy

Our government's earliest leaders struggled over the shape of our banking system. They knew that banks have considerable financial power. Should this power be concentrated in a few institutions, they asked, or shared by many? Alexander Hamilton argued strongly for one central bank; that idea horrified Thomas Jefferson, who believed that local control was the only way to restrain banks from becoming financial monsters.

We've tried both ways, and our current system seems to be a compromise. It allows for a multitude of banks, both large and small. Both federal and state governments issue bank charters for "public need and convenience," and regulate banks to ensure that they meet those needs. The Federal Reserve controls the money supply at a national level; the nation's 9,941 banks control the flow of money in their respective communities.

Because banks hold government-issued charters and generally belong to the federal Bank Insurance Fund, state and federal governments use banks as instruments of broad financial policy, beyond money supply. Governments encourage or require different types of lending; for instance, they enforce nondiscrimination policies by requiring equal opportunity lending. They promote economic development by requiring lending or investment in banks' local communities, and by deciding where to issue new bank charters. Using banks as tools of economic policy requires a constant balancing of banks' needs against the needs of the community. Banks must be profitable to stay in business, and a failed bank doesn't meet anyone's needs.

What's the Difference? Banks, Thrifts, and Credit Unions

There are three major types of deposit-taking institutions in the United States. These are **banks. thrifts.** and **credit unions.**

These types of institutions have become more like each other in recent decades. and their unique identities have become less distinct. They still differ. however. in specialization and emphasis, and in their regulatory and supervisory structures.

Commercial banks are the "department stores" of the financial services world. The thrift institutions and credit unions are more like specialty shops that, over time. have expanded their lines of business to better compete for market shares.

Commercial Banks

Commercial banks are stock corporations that make loans to businesses and offer checking and other deposit accounts. Basically, banks receive deposits, and hold them in a variety of different accounts; extend credit through loans and other instruments: and facilitate the movement of funds. While commercial banks generally specialize in short-term business credit, they also make consumer loans and mortgages, and have a broad range of financial powers. Their corporate charters and the powers granted to them under state and federal law determine the range of their activities.

States and the federal government each issue bank charters. State-chartered banks operate under state supervision, and if they fail, are closed under the provisions of state law. National banks are chartered and regulated by the Office of the Comptroller of the Currency, a division of the Treasury Department. Banks can choose between a state and a federal charter when starting their business, and can also convert from one charter to another. Commercial banks receive deposit insurance from the Federal Deposit Insurance Corporation's Bank Insurance Fund (BIF). All national banks, and some state-chartered banks. are members of the Federal Reserve System.

Commercial banks maintain an important role in the U.S. financial system. Today, there are 7,083 state-chartered and 2,858 federally-chartered commercial banks. Commercial banks hold approximately $4.3 trillion in assets, and over $3 trillion in deposits.

Savings and Loans

Savings and loan associations have traditionally specialized in real estate lending, particularly loans for single-family homes and other residential properties. They can be owned by shareholders ("stock" ownership), or by their depositors and borrowers ("mutual" ownership). These institutions are referred to as "thrifts," because they originally offered

only savings accounts, or *time deposits*. Over the past two decades, however, they have acquired a wide range of financial powers, and now offer checking accounts (*demand deposits*) and make business and consumer loans as well as mortgages.

Savings institutions by charter must hold a certain percentage of their loan portfolio in qualifying assets. Prior to 1995 only housing-related assets were considered qualifying assets. However, Congress expanded these assets to include credit cards, small business lending, and student loans. Savings institutions must maintain 65% of their portfolio in qualifying assets to maintain their membership in the Federal Home Loan Bank System.

Savings and loan associations are chartered by the OTS or by the state savings and loan supervisor. Generally, savings and loan associations are insured by the Savings Association Insurance Fund (SAIF).

The number of thrifts has declined dramatically in the past decade as differences have narrowed between these institutions and commercial banks. Furthermore, the savings and loan crisis of the 1980s forced many thrifts to close or merge with other institutions. Today, 1,376 savings and loans continue to operate holding over $770 billion in assets and $530 billion in deposits.

State Savings Banks

State chartered savings banks are community based institutions whose purposes are to provide housing and small community based lending. They are a hybrid institution generally insured by the Bank Insurance Fund (BIF). Today, 585 state chartered savings banks are in operation. They hold over $257 billion in assets and almost $200 billion in deposits.

Credit Unions

Credit unions are cooperative financial institutions, formed by groups of people with a common bond. These groups of people pool their funds to form the institution's deposit base; the group owns and controls the institution together. Membership in a credit union is not open to the general public, but is restricted to people who share the common bond of the group that created the credit union. Examples of this common bond are working for the same employer, belonging to the same church or social group, or living in the same community. Credit unions are nonprofit institutions that seek to encourage savings and make excess funds within a community available at low cost to their members.

Credit unions accept deposits in a variety of accounts. All credit unions offer savings

accounts. or time deposits; the larger institutions also offer checking and money market accounts. Credit unions' financial powers have expanded to include almost anything a bank or savings association can do, including making home loans. issuing credit cards. and even making some commercial loans. Credit unions are exempt from federal taxation and sometimes receive subsidies. in the form of free space or supplies. from their sponsoring organizations.

Credit unions were first chartered in the U.S. in 1909, at the state level. The federal government began to charter credit unions in 1934 under the Farm Credit Association. and created the National Credit Union Administration (NCUA) in 1970. States and the federal government continue to charter credit unions; all credit unions are insured by the National Credit Union Share Insurance Fund, which is controlled by NCUA.

Today, there are more than 11,500 credit unions; these organizations hold $285.4 billion in deposits and $323.7 billion in assets.

Who Regulates What?

Commercial bank regulation involves federal agencies, state agencies, and territorial agencies. At first glance it seems hopelessly complicated, but it's not that hard to understand once you know what each agency does.

State and Federal Charterers

You may have seen or heard the term "dual banking system." This refers to the fact that both state and federal governments issue bank charters for the need and convenience of their citizens. The **Office of the Comptroller of the Currency (OCC)** charters national banks; the **state banking departments** charter state banks. "National" or "state" in a bank's name has nothing to do with where it operates; it refers to the kind of charter the bank has.

Chartering agencies ensure that new banks have the necessary capital and management expertise to meet the public's financial needs. The charterer is an institution's *primary regulator* with front-line duty to protect the public from unsafe and unsound banking practices. Charterers conduct on-site examinations to assess bank condition and monitor compliance with banking laws. They issue regulations, take enforcement actions, and close banks if they fail.

The Comptroller of the Currency supervises approximately 2,855 national banks. State bank supervisors oversee about 7,086 commercial banks.

The Deposit Insurer

The **Federal Deposit Insurance Corporation (FDIC)** administers the **Bank Insurance Fund**, which insures the deposits of member banks up to $100,000 per account. All states now require newly-chartered state banks to join the FDIC before they can accept deposits from the public. Under the 1991 Federal Deposit Insurance Corporation Improvement Act (FDICIA), both state-chartered and national banks must apply to the FDIC for deposit insurance; previously, national banks had received insurance automatically with their new charters.

The FDIC is the federal regulator of the approximately 6,051 state-chartered banks that do not belong to the Federal Reserve System. It cooperates with the state banking departments to supervise and examine these banks, and has considerable authority to intervene to prevent unsafe and unsound banking practices. The FDIC also has backup examination and regulatory authority over national and Fed-member banks.

The FDIC deals with failed institutions by either liquidating them or selling the institutions to redeem insured deposits.

The Central Bank

The **Federal Reserve System** controls the flow of money in and out of banks by raising or lowering its requirements for bank reserves and buying and selling federal securities. It lends money to banks at low interest rates (the "discount rate") to help banks meet their short-term liquidity needs, and is known as the "lender of last resort" for banks experiencing liquidity crises. Together, the FDIC and the Federal Reserve form the federal safety net that protects depositors when banks fail.

Membership in the Federal Reserve System is required for national banks, optional for state banks. While many large state banks have become Fed members, most state banks have chosen not to join. The Federal Reserve is the federal regulator of the 1,042 state-chartered member banks, and cooperates with state bank regulators to supervise these institutions.

The Federal Reserve also regulates all bank holding companies. Its regulatory focus is not so much on the banks within a holding company as on the umbrella structure of the holding company itself. Holding companies must apply to the Federal Reserve to acquire new subsidiaries or engage in new activities. The Fed monitors the capital condition and general financial health of holding companies, and may take enforcement actions against them. The Federal Reserve is also responsible for federal oversight of foreign banks operating in the United States.

How Did We Get So Many Regulators?

Many people have said that we would never design our current regulatory system as it is if we were starting from scratch. But our current system has evolved with the country, and changed with the country's needs.

The states were the first governments to charter banks in the United States. The Federal government chartered the First and Second Banks of the United States in the early 19th century. These were the first national banks, and performed functions similar to today's Federal Reserve System. From 1837, when the Second Bank's charter expired, to 1863, there were no national banks and no federal regulators.

The National Bank Act of 1863 created the Office of the Comptroller of the Currency, and authorized it to charter national banks. The original purpose of both the OCC and national banks was to circulate a universal currency, thus making tax collection easier and helping to finance the Civil War. The dual banking system took shape in the late 19th

century, as states reformed their chartering policies and regulatory systems in response to the National Bank Act.

A series of money shortages early in the 20th century made it clear that the country needed some central authority to monitor and control the money supply. The Federal Reserve Act of 1913 established this authority through a network of twelve Federal Reserve Banks, overseen by a Board of Governors. The Federal Reserve System had regulatory authority over all its member banks; this was the first time a federal agency had direct authority over state-chartered banks, although state bank membership in the Federal Reserve was voluntary.

The FDIC was created by the Banking Act of 1933, in response to the avalanche of bank failures that followed the stock market crash of 1929. The FDIC originally insured deposits up to $5,000. The 1933 Banking Act required all state-chartered banks to join the Federal Reserve within a certain period of time or lose their deposit insurance, but this requirement was eventually repealed. The FDIC established its own standards for state nonmember bank acceptance into the fund.

Bank holding companies were new corporate entities that began appearing in the 1940s. The banks were all regulated, but no one regulated the holding company subsidiaries that weren't banks, and no one watched the flow of resources among affiliates within the holding company. The Bank Holding Company Act of 1956 gave the Federal Reserve regulatory responsibility for these companies, while leaving the supervision of banks within holding companies in the hands of their traditional regulators.

In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) expanded the FDIC's supervisory and enforcement authority, and extended its responsibilities to include savings and loans as the administrator of the new Savings Association Insurance Fund (SAIF).

Most recently, 1991's FDICIA expanded the authority of federal regulators to intervene in troubled institutions. FDICIA also mandated specific enforcement actions for unhealthy institutions, the first time such provisions had been included in federal statutes.

The Deposit Insurance System

The **Federal Deposit Insurance Corporation** (FDIC) is an independent federal agency that manages the **Bank Insurance Fund (BIF)**, which insures deposits in commercial banks, and the **Savings Association Insurance Fund (SAIF)**, which insures deposits in savings and loan associations.

Federal deposit insurance is mandatory for all federally-chartered banks and savings institutions. All states also require federal deposit insurance for newly-chartered banks, either through statute, regulation or practice.

The FDIC has no authority to charter a bank, and may only close a bank if the bank's charterer fails to act in an emergency. The FDIC depends on the charterer to declare a bank in danger of failure before it can step in. It does, however, have the authority to revoke an institution's deposit insurance, essentially forcing the bank to be closed. It also has direct supervisory authority over state-chartered banks that are not members of the Federal Reserve System, and backup authority over national and Fed-member banks.

The FDIC has a five-member board of directors which includes the Chairman of the FDIC, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and two public members appointed by the President and confirmed by the Senate. A new provision was added in 1996 to require that one FDIC Board member have state bank supervisory experience.

How Deposit Insurance Works

The **Bank Insurance Fund** (BIF) insures deposits in commercial banks and savings banks up to $100,000 per account. BIF receives no taxpayer money. Insured banks pay for deposit insurance through premium assessments on their domestic deposits. Foreign deposits -- deposits at branch offices of domestic banks outside the United States or its overseas territories -- are not insured, and are thus not subject to deposit insurance premiums.

From 1934 to 1989, the deposit insurance premium for banks was 12 cents per $100 (12 basis points) of domestic deposits. The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) authorized the FDIC to raise premiums if necessary to bolster the deposit insurance fund. The Federal Deposit Insurance Corporation Improvement Act (FDICIA) increased that authority by authorizing the FDIC to levy special and emergency assessments in addition to the usual premiums.

FDICIA required the FDIC to maintain assessments at an average of 23 basis points until the Bank Insurance Fund reached a level of 1.25% of insured deposits, a level the fund

reached in 1995. FDICIA also directed the FDIC to develop a system of risk-based deposit insurance premiums, which the agency enacted in 1992.

In 1996, Congress made several changes to the deposit insurance system. Since the savings and loan crisis, the SAIF had not been fully capitalized at the required 1.25% reserve ratio. The **Economic Growth and Regulatory Relief Act of 1996** capitalized SAIF through a one-time assessment on SAIF deposits (approximately 65 basis points). In addition, the legislation will merge the SAIF into the BIF on January 1, 1999, provided no thrifts exist at that time. Finally, the bill required that until the merger of the funds occurs, SAIF assessments cannot be lower than BIF assessments.

When an insured bank fails, the FDIC receives the institution from its charterer and makes sure that insured depositors have access to their accounts. The FDIC may conduct this resolution process in several ways:

- The FDIC can **liquidate** an institution, meaning that it issues checks for all insured deposits, dissolves the bank and sells off the bank's assets to recoup its losses. Uninsured depositors almost always lose money in a liquidation, depending on how much the FDIC is able to recover by selling assets. Liquidation generally requires a larger cash outlay than other resolution methods.

- The FDIC can execute an **insured deposit transfer**, in which it sells the failed bank's insured deposits to another institution for a fee. This is similar to a liquidation, in that the FDIC makes no effort to preserve the failed bank as an institution; the agency sells off its assets and pays the uninsured depositors according to what it recovers.

- The FDIC can negotiate a **purchase and assumption** (P&A) transaction, in which a healthy institution buys all or most of a failed bank's assets as well as its deposits. The FDIC restores the assets of the failed institution with cash payments or guarantees, so the acquiring bank takes on little risk. Traditionally, purchase and assumption transactions have protected uninsured as well as insured deposits. FDICIA, however, prohibited the FDIC from redeeming uninsured deposits after 1994 unless the President, the Secretary of the Treasury, and the FDIC jointly determine that failure to pay off uninsured deposits would pose an unacceptable risk to the economy.

- The FDIC can offer **open bank assistance** (OBA), or an **assisted transaction**, in which it arranges for the purchase or recapitalization of an institution before it actually fails. Uninsured depositors are usually protected in these transactions.

History

The concept of deposit insurance originated in the states many years before it became a policy of the federal government. New York created the first insurance program in 1829, and a total of 14 states established deposit insurance systems before 1933. State insurance funds were successful until the passage of the National Bank Act. After the National Bank Act, so many state banks converted to national charters to avoid the national tax on state bank notes that state deposit insurance funds did not have a broad enough base to be effective. Later, agricultural crises of the late 1920s contributed to the ultimate collapse of state insurance funds, since these funds could not diversify their risk. The major difference between these funds and today's federal insurance fund was that banks had been directly involved in the supervision and capitalization of their state insurance funds.

The **National Banking Act of 1863**, while not directly addressing the issue of deposit insurance, sought to stabilize the banking system by unifying the currency and decreasing the possibility of bank failures.

The **Federal Reserve Act of 1913** was created to prevent bank runs by injecting liquidity into the financial markets when necessary to help maintain depositor confidence. In 1932, however, after an alarming number of bank failures, the public began withdrawing their deposits. This led to more bank closings and more runs, a spiral of panic that ended with the Bank Holiday of 1933.

The **National Banking Act of 1933** created the Federal Deposit Insurance Corporation (FDIC), under the Federal Deposit Insurance Act, to provide insurance for all banks (mandatory for national banks, voluntary for state banks). FDIC member banks were originally required to join the Federal Reserve System as well. The Act also gave the FDIC regulatory and examination functions. Banks who participated in the insurance plan were assessed an annual fee of one-half of one percent (50 basis points) of deposits. If these fees were inadequate, the FDIC had the power to impose further assessments. Deposit insurance coverage at the time was $2,500.

The **Federal Deposit Insurance Act of 1950** required the FDIC to rebate 60% of bank assessments after deducting operating costs and insurance losses. This law was enacted because the FDIC's net worth in 1946 was $1 billion, a figure believed to be sufficient to

cover almost any banking problem. Banks had become stronger and felt that the assessment rate was too high.

The **Financial Institutions Reform, Recovery, and Enforcement Act of 1989** transferred the savings and loan insurance fund, FSLIC, to the FDIC; it renamed the Bank Insurance Fund and created the Savings Association Insurance Fund. FIRREA required that the FDIC maintain the Bank Insurance Fund at 1.25% of insured deposits. To achieve this level, it gave the FDIC the authority to raise premiums as needed, to a maximum level of 35 cents per $100. (This ceiling was removed in 1990.)

The **Federal Deposit Insurance Corporation Improvement Act of 1991** significantly expanded the FDIC's authority over all insured institutions. It required the FDIC to institute risk-based insurance premiums, which the agency did in 1992. It established a system of mandatory regulatory sanctions against banks with declining capital, in an effort to minimize losses to the Bank Insurance Fund.

Why Do We Need Deposit Insurance?

Deposit insurance provides three important benefits to the economy:

1. It assures small depositors that their deposits are safe, and that their deposits will be immediately available to them if their bank fails.

2. It maintains public confidence in the safety of public deposits, thus fostering economic stability. Without the confidence of the public, banks could not lend money, but would have to keep depositors' money on hand in cash at all times.

3. It supports the banking structure. Deposit insurance makes it possible for the United States to have a system of both large and small banks; if there were no deposit insurance, the banking industry would probably be concentrated in the hands of a very few enormous banks.

An argument against deposit insurance is that it reduces "depositor discipline," which is the depositors' means of policing bank activity. This is true. If depositor discipline alone governed the banking system, however, we would see a significant increase in bank runs, losses to small savers, and economic instability, particularly in credit markets. The difficulty in maintaining a successful deposit insurance system lies in maintaining a role for depositor discipline without threatening the overall stability of the banking system.

Bank Geographic Structure

In banking, the term geography refers to the area in which banking activities are allowed to take place, such as interstate banking, and intrastate and interstate branching. While even banking experts often confuse the terms, they have distinctly different meanings.

Intrastate Branching

Intrastate branching refers to branching *within* a state. Allowing banks to open more than one office or branch originated at the state level, and the states have directed the expansion of banks' geographic boundaries. Fifty years ago, few banks had more than one office. Today, most banks can open branches across their states. Forty-two states, the District of Columbia and Puerto Rico allow statewide branching, and eight states allow limited branching.

Today there are over 56,000 bank branches open across the country. Many banks have expanded their branch network in order to better meet the needs and convenience of their customers. Two-thirds of banks today operate branches, commonly over broad areas within their home states.

The 1927 McFadden Act sought to give national banks competitive equality with state-chartered banks by letting national banks branch to the extent permitted by state law. The McFadden Act specifically prohibited interstate branching by allowing national banks to branch only within the state in which it is situated. Although the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 repealed this provision of the McFadden Act, it specified that state law continues to control *intra*state branching, or branching within a state's borders, for both state and national banks.

Interstate Banking

Interstate banking refers to the ability of a bank holding company to own and operate banks in more than one state. Under the Douglas Amendment to the Bank Holding Company Act of 1956, states controlled whether, and under what circumstances, out-of-state bank holding companies could own and operate banks within their borders. This right was upheld in the 1985 *Northeast Bancorp v. Board of Governors* decision, which determined that states could establish and enforce regional interstate banking compacts.

The need for the Douglas Amendment grew from the concern that bank holding companies were evading the McFadden Act and state branching laws by acquiring numerous subsidiary banks in various states, and then operating these banks as if they were branches. The development of these interstate bank networks was a significant factor leading to Congress' passage of the Bank Holding Company Act of 1956. Senator Douglas

emphasized that a primary purpose of his amendment was "to prevent an undue concentration of banking and financial power, and instead keep the private control of credit diffused as much as possible."

Regional compacts were reciprocal legislative agreements between states in a specific geographic area. For example, six New England states adopted legislation in the mid-1980s allowing interstate acquisitions by banks in the New England region. Banks in other regions, in the southeastern United States and the Midwest, soon followed with their own regional banking arrangements.

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 repealed the Douglas Amendment. On September 29, 1995, federal law allowed full nationwide banking across the country, regardless of state law. Another provision of the Riegle-Neal Act allows affiliate banks within bank holding companies to effectively act as branches for each other, accepting deposits, collecting payments, and providing other customer services.

Interstate banking has resulted in increased consolidation and concentration in the banking industry. While the United States had 14,399 banks in 1940, the country has 9,943 banks today; a 31% decline over fifty years. In recent years, the annual consolidation rate has increased. In 1994 and 1995 the consolidation rate was almost 8% and 5% respectively.

Interstate Branching

Interstate branching means that a single bank may operate branches in more than one state without requiring separate capital and corporate structures for each state. The state of New York approved the first interstate branching statute in June, 1992. This law set several requirements and conditions on New York branches of out-of-state banks; it also required reciprocity, that is, that New York banks be allowed to branch into the home states of banks that branch into New York. North Carolina, Oregon, and Alaska passed similar laws in 1992 and 1993.

The Riegle-Neal Interstate Banking and Branching Efficiency Act allows national banks to operate branches across state lines after June 1, 1997. The federal law allows branching through acquisition only, which means that a bank must acquire another bank and merge the two structures in order to operate branches across state lines.

The Riegle-Neal Act allows states to "opt out" of interstate branching by passing a law to prohibit it before June 1, 1997. A state that "opts out" of interstate branching prevents

both state and national banks from branching into or out of its borders. If a state opts out, it may opt back in at any time by repealing its prohibition on interstate branching. So far, Texas is the only state to "opt out" of interstate branching, and its "opt out" law sunsets in 1999.

States may also "opt in" before June 1, 1997, by passing a law to allow interstate branching for both state and national banks. States that do not wish to "opt out" must enact some form of legislation to allow state-chartered banks to operate branches across state lines, because the Riegle-Neal Act addresses branching rights for national banks only. As of year-end 1996, 41 states, the District of Columbia and Puerto Rico have passed legislation "opting in" to interstate branching. Please refer to the attached chart summarizing state legislative activity on interstate branching.

States also have the power to authorize *de novo* branching across state lines, which would allow a bank to simply open a branch in another state instead of having to acquire an entire bank. Twelve states, the District of Columbia and Puerto Rico have decided to allow *de novo* branching, however, all most all of them have done so on a reciprocal basis.

Interstate branching will require many changes in the current system of bank supervision. Generally, state and federal regulators examine only a bank's headquarters, not its branches. While this will probably continue to be the case in a system of interstate branching, state and federal regulators are working now on ways to collect and share the information they need about banks' operations in multiple states.

Significant progress has been made in meeting the challenges of regulating a state-chartered bank that operates on an interstate basis. In November, 1996, the state banking departments, the Federal Deposit Insurance Corporation and the Federal Reserve Board unanimously approved and signed two agreements that respond to these challenges. The agreements create "seamless supervision" for multi-state, state-chartered banks by providing a single regulatory point of contact at both state and federal levels.

CONFERENCE OF STATE BANK SUPERVISORS

Status of Interstate Branching Legislation in the States

As of December 31, 1996, 42 states, the District of Columbia and Puerto Rico have acted on interstate branching:

STATE	EFFECTIVE DATE	OPT IN	OPT OUT	ALLOWS DE NOVO	ACQUISITION OF BRANCH ONLY *	MINIMUM AGE REQUIREMENT
Alabama	5/31/97	Yes	n/a	No	No	5 year
Alaska	1/1/94	n/a[1]	n/a	No	No	None
Arizona	8/31/96	Yes	n/a	No	No	5 Year
California	10/2/95	Yes	n/a	No	No	5 year
Colorado	6/1/97	No[2]	n/a	No	No	5 year
Connecticut	6/27/95	Yes	n/a	Reciprocal basis	Yes	5 year
Delaware	9/29/95	Yes	n/a	No	No	5 year
District of Columbia	6/13/96	Yes	n/a	Reciprocal basis	Reciprocal basis	2 year
Florida	5/31/97	Yes	n/a	No	No	3 year
Georgia	6/1/97	Yes	n/a	No	No	5 year
Hawaii	6/1/97	Yes	n/a	No	No	5 year
Idaho	7/1/95	Yes	n/a	No	No	5 year
Illinois	6/1/97	Yes	n/a	No	No	None
Indiana	3/15/96	Yes	n/a	Reciprocal basis	Yes	None
Iowa	6/1/97	No[2]	n/a	No	No	5 year
Kentucky	6/1/97	Yes	n/a	No	No	5 year

[1]Passed interstate branching legislation pre-Riegle-Neal.

[2]Includes no express authorization of interstate branching, but sets requirements and restrictions on interstate branch operation.

STATE	EFFECTIVE DATE	OPT IN	OPT OUT	ALLOWS DE NOVO	ACQUISITION OF BRANCH ONLY *	MINIMUM AGE REQUIREMENT
Louisiana	6/1/97	No[2]	n/a	No	No	5 year
Maine	1/1/97	Yes	n/a	Reciprocal basis	Yes	None
Maryland	9/29/95	Yes	n/a	Reciprocal basis until 6/1/97, then unrestricted	Yes	None
Massachusetts	8/2/96	Yes	n/a	Reciprocal basis	Yes	3 year
Michigan	11/29/95	Yes	n/a	Reciprocal basis	Yes	None
Minnesota	6/1/97	Yes	n/a	No	No	5 year
Mississippi	5/1/97	Yes	n/a	No	No	5 year
Nevada	9/28/95	Yes	n/a	In counties with less than 100,000	In counties with less than 100,000	5 year
New Hampshire	6/1/97	Yes	n/a	No	No	5 year
New Jersey	4/17/96	Yes	n/a	No	Reciprocal basis	None
New Mexico	6/1/96	Yes	n/a	No	No	5 year
New York	2/6/96	Yes	n/a	No	Yes	None
North Carolina	6/22/95	Yes	n/a	Reciprocal basis until 6/1/97, then unrestricted	Yes	None
North Dakota	5/31/97	Yes	n/a	No	No	None
Oklahoma	5/31/97	Yes	n/a	No	No	5 year
Oregon	2/27/95	Yes	n/a	No	Yes	3 year
Pennsylvania	7/6/95	Yes	n/a	Reciprocal basis	Reciprocal basis	None

STATE	EFFECTIVE DATE	OPT IN	OPT OUT	ALLOWS DE NOVO	ACQUISITION OF BRANCH ONLY *	MINIMUM AG REQUIREME
Puerto Rico	9/29/95	Yes[3]	n/a	Yes	Yes	None
Rhode Island	6/20/95	Yes	n/a	Reciprocal basis	Yes	None
South Carolina	7/1/96	Yes	n/a	No	No	5 year
South Dakota	7/1/96	Yes	n/a	No	No	5 year
Tennessee	6/1/97	Yes	n/a	No	No	5 year
Texas	8/28/95	n/a	Yes	n/a	n/a	n/a
Utah	6/1/95	Yes	n/a	No	Yes	5 year
Vermont	5/30/96	Yes	n/a	No	Yes	5 Year
Virginia	7/1/95	Yes	n/a	Reciprocal Basis	Yes	None
Washington	6/6/96	Yes	n/a	No	No	5 year
West Virginia	5/31/97	Yes	n/a	Reciprocal basis	Reciprocal basis	None

* Allows out-of-state banks to acquire a portion of an in-state bank's branch network rather than requiring the purchase of the entire bank.

[3]Circular Letter Number 95-96-D-55-2, issued on September 29, 1995, clarifies that interstate banking and branching have been authorized by the Banking Act since its adoption in 1933.

What Can Banks Do? Products and Services

All commercial banks accept deposits and make commercial loans. This intermediation function is a bank's core business. Beyond that, however, banks and bank holding companies may offer other products and services (so-called "nonbank activities"). "Products and services" are also referred to as "powers."

An institution's primary regulator determines what the institution can do within the parameters set by law. The U.S. Congress sets the law for national banks and each state legislature sets the law for the banks it charters. The Comptroller of the Currency is the regulator for national banks, state bank supervisors are the primary regulator for state-chartered banks, and the Federal Reserve System regulates the activities of bank holding companies. The FDIC monitors state-authorized activities of state-chartered banks to protect insured deposits from unsafe and unsound activities, but has limited authority to intervene directly in the activities of national banks or holding companies.

National Banks

The National Bank Act limits the activities of national banks to those deemed "incidental to its organization." These activities include collecting deposits and making loans; buying, selling and circulating currency; holding real estate; providing fiduciary services; and trading certain securities for clients. The Comptroller of the Currency has discretion to allow other activities that may be considered "incidental" to banking.

Activities authorized by the OCC under this provision include selling credit life insurance; providing Internet access; offering banking-related data processing services; issuing credit cards; acting as leasing agents for personal property; warehousing and servicing loans; assisting customers in tax preparation; operating postal substations; acting as payroll issuers; maintaining business records for customers; and providing consulting and auditing services for other banks. National banks can also verify and collect on checks and credit cards for third parties, provide bill payment services, offer economic analysis and forecasts to customers, and develop financial computer software for sale to other banks and customers. National banks in towns of fewer than 5,000 people may sell insurance, and the OCC has recently authorized banks in those areas to market their products outside of the town. In addition, the OCC has authorized national bank sales of other uninsured products (e.g., mutual funds and annuities) as well.

The 1933 Banking Act, also known as Glass-Steagall, prohibits national banks from engaging in securities activities. Glass-Steagall permits three investment banking activities for national banks: agency activities, restricted purchases for the bank's own account, and free dealing in certain government securities.

State Banks

Many states allow their state-chartered banks to offer nonbank products and services to their customers beyond the "incidental" powers of national banks. The attached table lists these activities and the states that have authorized them.

Agency activities, in which a bank acts on behalf of a customer (e.g., insurance or real estate sales), are wide-ranging. Eighteen states expressly authorize insurance powers for their state-chartered banks beyond those available to national banks, and 13 states authorize real estate brokerage.

FDICIA generally prohibits state-chartered banks from engaging *as principal* in activities not permitted for national banks, unless the FDIC determines that the activity poses no risk to the deposit insurance fund. A bank acts as principal when it takes an action on its own behalf, such as investing or underwriting. FDICIA allowed certain insurance underwriting activities to continue under a grandfather provision, but required divestiture of other activities over a five-year period. State chartered banks in eight states continue to engage in insurance underwriting as authorized by state law.

The FDIC has approved several banks' use of limited securities underwriting and real estate investment authority under state law. Seven states authorize banks to underwrite corporate debt and equity securities; 24 authorize municipal securities underwriting; 20 allow some real estate development, and 21 allow real estate equity participation.

Many states require or encourage their banks to conduct their nonbank activities through operating subsidiaries, a structure that is generally available to national banks as well. State supervisors examine and regulate these subsidiaries as parts of their parent banks.

Bank Holding Companies

A bank holding company (BHC) is a corporate structure that owns a bank. It may own other subsidiaries that engage in activities other than banking. The Federal Reserve Board determines permissible activities of these nonbanking subsidiaries based on the provisions of Section 4(c)(8) of the Bank Holding Company Act.

Section 4(c)(8) provides a "laundry list" of permissible nonbank activities for bank holding companies. These include providing services to the bank subsidiaries, such as accounting, advertising, data processing, courier services, personnel services, and underwriting blanket bond insurance for bank employees. Bank holding companies may hold shares of other companies as a fiduciary, and may own less than 5% of the shares of any other company. They may also own the shares of foreign companies that do most of their

business abroad, and the shares of export trading companies.

A provision of 4(c)(8) allows the Federal Reserve to approve other nonbank activities that are "closely related to banking." The Fed's Regulation Y lists these activities. Permissible nonbank activities under Regulation Y include consumer finance, credit card, mortgage and commercial financial operations; industrial loan companies; trust companies; financial counseling services; leasing agencies; investment in community development corporations; financial data processing services; bank-related courier services; credit life and home mortgage insurance; money transmittal; management consulting for other financial institutions; collection agencies; tax preparation services; consumer credit bureaus; consumer financial counseling; securities brokerage; government securities underwriting; printing and selling checks; and operating an options trading system.

Bank holding companies with less than $50 million in assets, or operating in towns of fewer than 5,000 people, can sell insurance. The Federal Reserve has also approved bank holding company investments of up to 25% in subsidiaries that underwrite commercial paper, mortgage-backed securities, and municipal revenue bonds.

Trends in Products and Services

Bank products and services have cycled through expansions and contractions over the past century. Before 1933, banks' relationships with other businesses were largely unrestrained. When the Depression struck, many policymakers believed that expanded bank powers -- especially bank securities activities -- were directly responsible for the collapse of the banking system. Whether or not this was the case is still a matter of debate, but the result was Glass-Steagall, which severely restricted ties between banking and commerce.

Since then, state legislatures and federal regulators have gradually moved to broaden the range of permissible activities for banks. This movement has speeded up considerably over the past five or ten years, as the financial markets and customers' needs have changed dramatically. Several states have acted over the past five years to allow new bank insurance powers, and the Comptroller of the Currency continues to allow new activities under the "incidental powers" authority. Since the late 1980s, the Fed has steadily broadened its interpretation of permissible activities under Glass-Steagall to allow limited securities and commercial paper underwriting. This liberalizing trend is likely to continue, as competition within the financial services industry blurs traditional lines between banking and other financial services.

CONFERENCE OF STATE BANK SUPERVISORS

Selected State-Authorized Expanded Powers

Securities Brokerage	Municipal Securities Underwriting	Real Estate Brokerage	Real Estate Equity Participation	Real Estate Development	Insurance Brokerage
Alabama*, Alaska, Arizona*, California, Connecticut*, Delaware*, Georgia, Indiana, Iowa*, Kansas*, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri*, Nebraska, New Jersey, New York*, North Carolina*, Oregon, South Carolina*, Tennessee, Texas*, West Virginia*, Wyoming	Arizona*, Connecticut*, Delaware*, Florida, Georgia, Indiana, Iowa*, Kansas*, Louisiana, Maine*, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York*, North Carolina, Ohio, Pennsylvania, Puerto Rico, Tennessee, Texas, Utah	Arizona*, California, Connecticut*, Florida, Idaho, Indiana, Iowa, Massachusetts, Nebraska, New Jersey, North Carolina*, Texas, Wisconsin **Insurance Underwriting** Alaska, Arizona*, Delaware, Florida, Massachusetts, New Jersey, North Carolina, South Dakota	Alaska, Arizona*, California, Connecticut*, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Maine, Massachusetts, New Jersey, North Carolina*, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia*, Wisconsin	Alaska, Arizona*, Arkansas, California, Connecticut*, Florida, Iowa, Kentucky, Maine, Massachusetts, Michigan, Missouri*, New Jersey, North Carolina*, Oregon*, Pennsylvania, Tennessee, Utah, Virginia, Wyoming	Alabama*, Arizona*, California, Delaware, Indiana, Iowa, Maryland*, Michigan, Mississippi, Nebraska, New Jersey, New York*, North Carolina, Oregon, South Dakota, Virginia, Washington, Wisconsin

* Subsidiary required.

What is a Foreign Bank?

The term "foreign bank" generally refers to any U.S. operation of a banking organization headquartered outside the United States. The first foreign banks established their presence in the United States in the mid-1800s; New York State was the first U.S. government to license or regulate these institutions. While state governments took the lead in welcoming foreign banks to the United States, the federal government has also acted to make sure that American markets are open to banks from all nations. Today, foreign banks are a significant presence in the American financial system, providing many important benefits to individuals, businesses, and the economy as a whole. They are most active in New York, California, Florida, Illinois, and Georgia, but also maintain operations in Texas, Washington, and a handful of other states.

Foreign banks most often come to the United States to provide services to U.S. subsidiaries of clients in their home countries. Once here, however, they provide a wide range of wholesale banking services to U.S. businesses and individuals. In fact, foreign banks make almost 35% of all loans to American businesses. Foreign-related institutions held $668 billion in assets at the end of 1995, approximately 12% of all assets in the U.S. banking system.

Foreign banking organizations can acquire or establish freestanding banks or bank holding companies in the U.S.; these banks are regulated and supervised as domestic institutions. For most foreign banking organizations, however, it is more cost-effective and productive to operate as another of several available structures: branches, agencies, loan production offices, representative offices, Edge Act or agreement corporations. Each of these structures has a different set of powers and regulatory requirements.

Branches and **agencies** are the most common structures of foreign banking organizations in the United States, numbering approximately 550. The major difference between these two types of banking offices is that branches may accept deposits, but agencies generally may not. Both structures can make and manage loans, conduct foreign exchange activities, and trade in securities and commercial paper. These offices may conduct most of the activities a domestic bank performs. The primary exception is that foreign branches and agencies may not accept deposits of less than $100,000 unless they had FDIC insurance before December 19, 1991. State bank supervisors and the Office of the Comptroller of the Currency separately license and supervise foreign bank branches and agencies. The Federal Reserve serves as the federal regulator of state-licensed foreign bank branches and agencies, in a system similar to that for domestic banks. More than 85% of foreign bank branches and agencies are state-licensed or -chartered.

Foreign banks may also establish **representative offices** in the United States. Representative offices have more limited powers than branches or agencies. Foreign banks

often open representative offices as a first step in establishing a presence in the United States. These offices serve as liaison between the parent bank and its clients and correspondent banks in the U.S. They may develop relationships with prospective clients, but they cannot conduct any banking transactions themselves. Representative offices must register with the Federal Reserve, and may be licensed by the states as well.

Edge Act and agreement corporations are foreign bank offices chartered by the Federal Reserve (Edge Act) or the states (agreement corporations) to provide financing for international trade. Domestic banking organizations may also establish Edge Act or agreement corporations. These offices have a broader range of powers than other banking organizations, but all their activities must relate to international trade. Other structures available to foreign banks are **commercial lending companies**, licensed by New York State, and **export trading companies**.

To protect American consumers and the overall stability of the U.S. financial system, the states and the Federal banking agencies regulate and supervise foreign banking operations in the United States. The major Federal laws affecting foreign banks in the United States are the **International Banking Act** (IBA) of 1978 and the **Foreign Bank Supervision Enhancement Act** (FBSEA) of 1991. The **Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994** also addresses foreign banks' operations in the United States.

State and federal bank supervisors recently unveiled a new system for supervising and examining foreign banks in the United States. Under this system, state and federal bank regulators work together to provide a seamless overview of the entire U.S. operation of a foreign bank, which may encompass several states. Because foreign bank branches and agencies are arms of their parent banks, their supervisory structure must be slightly different from that used for domestic institutions. Supervisors evaluate the office's risk management, operational controls, compliance with federal and state laws, and asset quality. The Federal Reserve also looks at the overall support the U.S. offices receive from their parent banks.

Foreign banks in the United States are an important source of new capital to American businesses. Because their parents are not as deeply affected by fluctuations in the U.S. economy as domestic institutions are, U.S. offices of foreign banks can provide credit even during domestic "credit crunches." Foreign-owned banks that have deposit insurance must comply with all U.S. consumer laws and pay premiums to the FDIC. All lenders must comply with federal fair lending statutes. In short, foreign banks in the United States are valuable corporate citizens, and an essential part of the American financial system.

PACIFIC DAILY NEWS, Thursday, February 20, 1997

TWENTY-FOURTH GUAM LEGISLATURE

NOTICE OF PUBLIC HEARING

The Committee on Finance & Taxation will conduct a public hearing on Monday, February 24, 1997 at the Legislative Public Hearing Room, 155 Hesler St. Agana, Guam 96910.

AGENDA

9:00 a.m.
Bill No. 133- AN ACT TO AMMEND THE GENERAL APROPRIATION ACT OF 1997 (P.L. 23-128).

11:00 a.m.
Bill No. 3- AN ACT TO ESTABLISH THE PROCEDURE AND CRITERIA TO BE USED BY THE GOVERNMENT OF GUAM IN PRIVATIZING THE FUNDING, DESIGN, CONSTRUCTION AND OPERATION OF A NEW MUNICIPAL SOLID WASTE FACILITY.

1:30 p.m.
Bill No. 141- AN ACT TO AMEND SECTIONS 100102, 106301, 106303, 106305, 106306, 106308 AND 106312 OF THE GOVERNMENT CODE (GUAM BANKING LAW), TO REPEAL AND REENACT SECTIONS 106202, 106205, 106216, 106302, 106601 OF THE GOVERNMENT CODE (GUAM BANKING LAW) AND TO ADD A NEW SECTION 106313 AND A NEW ARTICLE (3.5) TO CHAPTER 106 OF THE GOVERNMENT CODE (GUAM BANKING LAW).

2:30 p.m.
BILL NO. 62: AN ACT TO ADD A NEW §2608 TO ARTICLE 2, 11 GCA TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM, AND TO ADD A NEW §26208 TO ARTICLE 2,11 GCA TO MAKE A CONTINUOS APPROPRIATION TO THE DEPARTMENT OF EDUCATION.

The Public is invited to Attend and present written and/or oral testimony. Copies of the above cited bills may be obtained from the Office of Vice-Speaker Anthony C. Blaz at 472-3557/58/60