JGR Subj.
Fed Resv. Board

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 11, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Holdover Status of Federal Reserve Board Chairman

The attached memorandum has been revised, per your instructions.

Attachment

THE WHITE HOUSE

WASHINGTON

April 11, 1983

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING

SUBJECT: Holdover Status of Federal Reserve Board Chairman

INTRODUCTION:

You have inquired of this office concerning the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242. Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

CONCLUSION:

In our opinion and that of the Department of Justice, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to case law, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

DISCUSSION:

In an opinion dated January 31, 1978, the Office of Legal Counsel of the Department of Justice considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. That opinion concluded that the statutory holdover provision applicable to members of the Board did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the

Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244, but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This was in fact done by President Carter on February 2, 1978, when he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of a successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that Mr. Miller was not confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. There is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.), motion for stay pending appeal denied, 482 F. 2d 669 (D.C. Cir. 1973). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals noted that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The previously cited O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending.

THE WHITE HOUSE

WASHINGTON

ADMIN SENSITIVE

April 6, 1983

CONCLUSIONS: (add flash R from p 2

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING

SUBJECT: Holdover Status of Federal Reserve Board Chairman

INTRODUCTION:

You have inquired of this office concerning the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242. Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

DISCUSSION:

In an opinion dated January 31, 1978, the Office of Legal Counsel of the Department of Justice considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. That opinion concluded that the statutory holdover provision applicable to members of the Board did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244, but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This was in fact done by President Carter on February 2, 1978, when he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of a successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that Mr. Miller was not

confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. There is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.), motion for stay pending appeal denied, 482 F. 2d 669 (D.C. Cir. 1973). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals noted that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The previously cited O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending.

~~According to the O.L.C. opinion,~~ In our opinion and that of the Department of Justice, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to case law ~~to Phillips~~, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

To pg 1.

~~Attachments~~ I'm keeping 2nd page redone to take quotation off.

THE WHITE HOUSE

WASHINGTON

April 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Duration of Holding Office Pursuant to a Statutory Holdover Provision

Presidential Personnel has asked if James G. Stearns may serve indefinitely as a member of the Board of Directors of the Securities Investor Protection Corporation (SIPC) pursuant to the statutory holdover provision. Mr. Stearns was appointed by the President to the SIPC Board by and with the advice and consent of the Senate on July 16, 1982, to fill the remainder of a term expiring December 31, 1982. He was also designated Chairman. Mr. Stearns has been holding office since expiration of his term pursuant to 15 U.S.C. § 78ccc(c)(4)(C), which provides, in pertinent part, that a "director may serve after the expiration of his term until his successor has taken office." It is my understanding that Mr. Stearns does not relish the prospect of another Senate confirmation, and would prefer to continue to serve in a holdover capacity.

The statute does not set any specific limitation on the length of time a SIPC Board member may hold over, and I have not found any pertinent federal precedent on the question. It seems obvious, however, that in enacting the SIPC holdover provision - and similar provisions for other boards and commissions - Congress did not intend to authorize circumvention of its advice and consent role. Holdover provisions are enacted to ensure the continuity of government operations and that offices are filled without interuption. This limited purpose suggests that office may be held under a holdover provision only for a limited, reasonable period of time.

This proposition is in fact supported by state court decisions interpreting holdover provisions in state statutes. See, e.g., Stasch v. Weber, 188 Neb. 710, 199 N.W.2d 391, 395 (1972) ("The only purpose of the holding over statute is to prevent a temporary vacancy in a public

office, and to permit a reasonable time to allow for the exigencies many times present in the transfer of a public office from one person to his successor.") Hancock v. Queenan, 294 S.W. 2d 92, 95 (Ky. 1956) ("Of necessity, the [holdover provision] refers to a reasonable extension of tenure."); Benefield v. Cottle, 49 So. 2d 224, 225 (Ala. 1950) ("[Holdover provisions] were never intended to prolong the term of office beyond a reasonable time ... to enable the newly elected officer to qualify.")

What constitutes a "reasonable time" depends of course on all of the circumstances of the particular case. Failure of the Senate to act on a pending nomination, or repeated rejections of nominees, would justify the continued holding over of an incumbent for a period that would not otherwise be justified. In any event, it seems clear that a holdover provision should not be used as a substitute for the statutorily mandated nomination and confirmation process.

As a technical legal matter the President probably cannot be compelled to nominate someone for the position held by Stearns pursuant to the holdover provision. Nomination "is the sole act of the President, and is completely voluntary." Marbury v. Madison, 1 Cranch 137, 155 (1803). On the other hand, permitting Stearns to hold over indefinitely by failing to nominate someone (including Stearns) for the vacancy would doubtless spark a serious political controversy with Congress. It could also subject Stearns to a quo warranto action and open any actions taken by Stearns as Chairman of the SIPC Board to collateral attack.

I have prepared a memorandum to von Damm advising her that the SIPC Board holdover provision may not be used as a substitute for the nomination and confirmation process.

THE WHITE HOUSE

WASHINGTON

April 7, 1983

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING

SUBJECT: Duration of Holding Office Pursuant to a Statutory Holdover Provision

You have asked this office for guidance on the length of time a member of the Board of Directors of the Securities Investor Protection Corporation (SIPC) may hold office after expiration of his term pursuant to the statutory holdover provision. Five of the seven members of the SIPC Board are appointed by the President, by and with the advice and consent of the Senate, for fixed terms. Pursuant to 15 U.S.C. § 78ccc(c)(4)(C), a "director may serve after the expiration of his term until his successor has taken office."

Although this statutory holdover provision contains no specific limit on the length of time an individual may hold over, it is our view that an individual may hold office pursuant to a holdover provision only for a limited, "reasonable" period. Congress has enacted holdover provisions to guarantee that offices are occupied without interruption and to ensure continuity in government operations. It did not intend holdover provisions to be used as a means of circumventing its advice and consent function. While we have found no pertinent federal authority, this view of holdover provisions is amply supported by state court decisions interpreting analogous provisions in state law.

What constitutes a "reasonable" length of time will of course vary with the circumstances of each particular case. A given period of time may not be objectionable if, during that time, a nomination were pending before the Senate, the Senate recently rejected a nominee, or there were articulable difficulties in selecting a nominee, while the same period could be objectionable in the absence of such circumstances.

In sum, the SIPC Board holdover provision may not be used as a substitute for the statutorily mandated nomination and confirmation process. Permitting an incumbent to hold over indefinitely by failing to nominate someone (including the incumbent) for the vacancy would not only create a serious political controversy, but it could also subject the incumbent to lawsuits challenging his authority and subject any actions taken by him to collateral attack.

FFF/JGR:sts
FFFielding
JGRoberts
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

March 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Holdover Status of Federal Reserve Board Chairman

I was asked to determine the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242 (App. I 1977). Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

In an opinion dated January 31, 1978, the Office of Legal Counsel considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. 2 O.L.C. Op. 394 (Tab A). That opinion concluded that the statutory holdover provision applicable to members of the Board, 12 U.S.C. § 242 (App. I 1977), did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244 (1976), but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The O.L.C. opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This is in fact what President Carter did. On February 2, 1978, he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of his successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that

Miller was not confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. While the Vacancy Act, 5 U.S.C. §§ 3345-3348 (1976), does not, by its terms, apply to the Federal Reserve Board, see 2 O.L.C. Op., at 396, there is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.) aff'd, 482 F. 2d 669 (D.C. Cir. 1973) (Tab B). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals affirmed, noting that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending. 2 O.L.C. Op., at 396 n. 5.

According to the O.L.C. opinion, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to Phillips, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

Attachments

January 31, 1978

78-91 MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

Federal Reserve Board—Vacancy With the Office of the Chairman—Status of the Vice Chairman (12 U.S.C. §§ 242, 244)

You have requested us to consider the status of the chairmanship of the Federal Reserve Board in the event that the President's nominee has not been confirmed as Chairman by January 31, 1978, the date on which the incumbent's term expires. We have considered three possible resolutions of this question and have reached the following conclusions: First, the incumbent cannot hold over and continue to exercise the powers of the office as *de facto* Chairman; second, under relevant statutory authority, the Vice Chairman is only authorized to preside in the Chairman's absence although an argument could be made that the Vice Chairman possesses inherent authority to assume the duties of the Chairman when a vacancy has occurred. Such an approach, in our opinion, is of doubtful legality. Third, in light of the limited authority of the Vice Chairman, we believe that it is necessary for the President to designate one of the Board members as acting Chairman.

I. Holdover Chairman

Section 242 of Title 12, U.S. Code, provides that "one [member of the Federal Reserve Board] shall be designated by the President as chairman and one as vice chairman of the Board to serve as such for a term of four years."[1] The statutory assurance that "members" whose terms have expired should serve "until their successors are appointed and qualified," 12 U.S.C. § 242 does not address the continuance in office of the Chairman *qua* Chairman and therefore, is inapplicable under these circumstances. Thus, the Chairman's

[1]The 1977 amendments to the Federal Reserve Act, 91 Stat. 1387 (not yet applicable), require designation of the Chairman to be accompanied by the advice and consent of the Senate; they also alter the way in which the 4-year term is to run, but are not otherwise of significance to the question at hand.

term expires by operatio
United States, 93 U.S. 5

When this four year
perform the duties o
never held the office
whether he has qua
601.]

Because the incumbent is
reappointment, *see* 11 Q
results.[2]

II. Inher

Section 244 of Title 1
Board meetings in the
specify his duties. The
present that is temporary
example, by death of
numerous other agencies
serve in the event of the
vacancy in the office o
(Federal Power Commis
ment Opportunity Comm
same here, the absence

A review of the legis
point. *See* H. Rept. No.
73d Cong., 1st sess. (19
likely that the problem
term, and the resulting
occur until 2 years later

It might be contende
specification of very lim
reasonable to assume
Chairman from exercisi

[2]Counsel for the Federal R
as a *de facto* officer whose a
who have assumed such actio
323 (1902). Such will not b
notorious as to make those re
Officers holding over § 507 (
fact it would appear that ever
Moreover, intentional relian
can be taken to assure that t

[3]Originally, service as "g
was not limited by the specif
167 (Chairman and Vice Ch
hold office until his success
new member as Chairman.

term expires by operation of law after the statutory term has run. *Badger* v. *United States*, 93 U.S. 599, 601 (1876). There the court stated:

> When this four years comes round, [the officer's] right or power to perform the duties of the office is at an end, as completely as if he had never held the office . . . . Whether a successor has been elected, or whether he has qualified, does not enter into the question. [*Id.* at 601.]

Because the incumbent is not entitled to continue to exercise his powers absent reappointment, *see* 11 Op. Atty. Gen. 286 (1865), a vacancy in the position results.[2]

II. Inherent Authority of the Vice Chairman

Section 244 of Title 12 provides that the Vice Chairman is to "preside" at Board meetings in the "absence" of the Chairman but does not otherwise specify his duties. The term "absence" normally connotes a failure to be present that is temporary in contradistinction to the term "vacancy" caused, for example, by death of the incumbent or his resignation. With regard to numerous other agencies Congress has directed that the Vice Chairman is to serve in the event of the Chairman's absence or incapacity or as a result of a vacancy in the office of the Chairman. *See, e.g.*, 16 U.S.C. § 792 (1976) (Federal Power Commission); 42 U.S.C. § 2000e-4 (1976) (Equal Employment Opportunity Commission). Arguably, since Congress could have done the same here, the absence of such language must be regarded as meaningful.

A review of the legislative history of § 244 reveals no discussion of this point. *See* H. Rept. No. 150, 73d Cong., 1st sess. (1933); H. Rept. No. 254, 73d Cong., 1st sess. (1933); S. Rept. No. 77, 73d Cong., 1st sess. (1933). It is likely that the problem was not even considered since the change to a fixed term, and the resulting possibility of a vacancy in the chairmanship, did not occur until 2 years later. *See* 49 Stat. 705 (1935).[3]

It might be contended that no great significance should be attached to this specification of very limited duties. Instead, it could be argued that it would be reasonable to assume that Congress did not mean to preclude the Vice Chairman from exercising what might be regarded as an inherent function of his

[2]Counsel for the Federal Reserve Board has suggested that the incumbent could continue to serve as a *de facto* officer whose actions will be given legal effect with regard to innocent third parties who have assumed such actions to be authorized. *See, Waite* v. *City of Santa Clara*, 184 U.S. 302, 323 (1902). Such will not be the case, however, where the defects in the officer's title are so notorious as to make those relying on his acts chargeable with knowledge thereof. 63 Am. Jur. 2d. *Officers holding over* § 507 (1972). Because the expiration of the incumbent's term is a well-known fact it would appear that even innocent third parties could not claim lack of knowledge in this case. Moreover, intentional reliance on this stop-gap doctrine is ill-advised where more effective steps can be taken to assure that the chairmanship is legally and continuously filled.

[3]Originally, service as "governor" and "vice governor" was at the pleasure of the President and was not limited by the specification of a fixed term. *See* 38 Stat. 260, 42 Stat. 620; *see also* 48 Stat. 167 (Chairman and Vice Chairman). No problem of succession was created since a member could hold office until his successor had been qualified, at which time the President could designate the new member as Chairman.

323-972 O - 81 - 26 : QL 3

office and temporarily assuming the duties of the chairmanship whenever that office is vacant.[4] In light of the statute's clear language, however, we believe that this contention should not control and that a third alternative-designation by the President of an acting Chairman, is preferable.

III. Presidential Designation of an Acting Chairman

The Vacancy Act, 5 U.S.C. §§ 3345-3348 (1976), which limits Presidential authority to fill Executive branch vacancies on a temporary basis under certain circumstances, by its terms applies only to executive departments and therefore not to the Federal Reserve Board. We have consistently taken the position that the President possesses inherent authority to make temporary appointments necessary to ensure the continuing operation of the Executive branch. Although no court has squarely addressed the point, the Court of Appeals for the District of Columbia in *Williams* v. *Phillips*, 482 F.(2d) 669 (D.C. Cir. 1973) seemed to regard this theory as plausible.[5]

Such power has most often been exercised with respect to Executive branch agencies rather than independent regulatory bodies that have under certain circumstances, *see*, *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), been protected from Presidential control. Where it has deemed insulation from such control necessary, Congress has, however, provided that independent regulatory bodies should choose their own temporary chairmen.[6] Congress has not limited the President's authority with regard to the Federal Reserve Board in such a fashion; nor has it otherwise clearly specified the procedure to be used in handling a vacancy in the chairmanship. Under such circumstances, action by the President would appear to be appropriate. His discretion in selecting a temporary Chairman is not confined by the statutory scheme. It is therefore our view that he is free to select the Vice Chairman or some member to serve in this capacity.

IV. Conclusion

Because of his limited term, the present Chairman may not hold over in office and continue to perform his official functions. In light of the specific

[4]Some support for this position may be gained from the past practice of the Federal Reserve Board. According to the Counsel for the Chairman, vacancies occurred in both the office of Chairman and that of Vice Chairman early in 1948. On February 3, 1948, the Board met and elected the former Chairman as Chairman *pro tempore*. He served until the new Chairman had been designated and qualified. In following this procedure, the Board appears to have adopted the approach outlined in 12 U.S.C. § 244, albeit that the pertinent language speaks of "absence" rather than "vacancy." ("In the absence of the chairman and the vice chairman, the Board shall elect a member to act as chairman pro tempore.")

[5]Since the President has already submitted the name of the nominee to the Senate for confirmation, no problem of the sort at issue in the *Phillips* case—use of the temporary appointment power to avoid the necessity for Senate confirmation—is presented here.

[6]Although the President is charged with designating the Chairman of the Federal Communications Commission, *see* 47 U.S.C. § 155(a) (1976), the Commission itself is authorized to choose an acting Chairman should that become necessary. *Id.*

statutory limitation concerning service during the Chairman's "absence" the better view is that the Vice Chairman may not, under his statutory authority, automatically serve as Chairman during a temporary vacancy in the office of the Chairman. In the absence of any statutorily prescribed mechanism for filling vacancies, the President may designate one of the members of the Board to serve as acting Chairman until such time as the nominee has been confirmed.

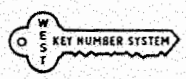
LARRY A. HAMMOND
Deputy Assistant Attorney General
Office of Legal Counsel

Court read the statute to allow such action "Where the debtor was not a resident of this State at the time the claim arose." Such a construction is plainly untenable.

IV.

Plaintiff and Defendant are personally before this Court as residents of Illinois. The Writ of Attachment was improperly issued and is hereby vacated.

So ordered.



Senator Harrison A. WILLIAMS, Jr., et al., Plaintiffs,

v.

Howard J. PHILLIPS, Acting Director, Office of Economic Opportunity, Defendant.

Civ. A. No. 490-73.

United States District Court, District of Columbia.

June 11, 1973.

Action brought by four senators to remove defendant from his position as acting director of Office of Economic Opportunity. The District Court, William B. Jones, J., held that in absence of legislation providing for an acting director of OEO or legislation vesting a temporary power of appointment in President, constitutional process of nomination and confirmation of director must be followed; thus, individual who was appointed acting director by President but whose appointment was not confirmed by Senate was not appointed lawfully to his post.

Injunction issued.

Motion denied, D.C.Cir., 482 F.2d 669.

1. Courts ⇐328.3

Where purely injunctive relief is sought, amount in controversy, for jurisdictional purposes, may be measured either by value of relief sought by plaintiff or cost of enforcing that right to defendant. 28 U.S.C.A. § 1331(a).

2. Courts ⇐328.2(3)

Where plaintiffs challenged legal right of defendant to administer federal program with appropriation over $790,000,000 for one fiscal year, plaintiffs met the $10,000 jurisdictional requirement. 28 U.S.C.A. § 1331(a).

3. United States ⇐35

United States senators had standing to bring action to remove a defendant from his position as acting director of OEO on ground that his appointment had not been confirmed by Senate as required by statute, where declaration that defendant was unlawfully serving in office would bear upon senators' duties to consider appropriations for OEO or other legislative matters affecting OEO or position of OEO director. Economic Opportunity Act of 1964, § 601(a), 42 U.S.C.A. § 2941(a); 28 U.S.C.A. § 1331(a).

4. United States ⇐35

Fact that defendant was serving as acting director of OEO rather than director, did not remove direct injury to plaintiff senators, who challenged defendant's right to be acting director and who alleged right to pass on individual nominated to be director, but, if anything, aggravated injury, for purposes of standing, since acting director was performing duties of director without advice and consent which senators would have been able to assert over individual whose name had been submitted to Senate for confirmation. Economic Opportunity Act of 1964, § 601(a), 42 U.S.C.A. § 2941(a); 28 U.S.C.A. § 1331(a); Supplemental Appropriations Act, 1973, 86 Stat. 1498.

5. United States ⇐35

Facial inapplicability of Vacancies Act to appointment to office of director of OEO, on basis that the act on its face is applicable only to executive and military departments and that OEO is not

an executive or military department, did not establish legality of President's appointment of acting director of OEO without confirmation of Senate. Economic Opportunity Act of 1964, § 601(a), 42 U.S.C.A. § 2941(a); 5 U.S.C.A. §§ 101, 102, 104, 3348.

6. United States ⇐35

Unless Congress has vested appointment of officer in President, the courts, or a department head, he may be appointed only with advice and consent of Senate, unless that body is in recess. U.S.C.A.Const. art. 2, § 2.

7. United States ⇐35

Director of OEO is officer of United States because of statutory provision requiring Senate's confirmation of his appointment and he is not a mere agent or employee who is an officer and whose employment may be outside the confirmation process. U.S.C.A.Const. art. 2, § 2; Economic Opportunity Act of 1964, § 601(a), 42 U.S.C.A. § 2941(a).

8. United States ⇐28

Constitutional article obligating person to take care that laws be faithfully executed does not empower President to appoint officers temporarily, without restriction, to executive branch positions outside executive and military departments. U.S.C.A.Const. art. 2, § 3.

9. United States ⇐35

Vacancies Act does not apply to all executive agency temporary appointments. 5 U.S.C.A. § 3348.

10. United States ⇐35

In absence of legislation providing for an acting director of OEO or legislation vesting a temporary power of appointment in President, constitutional process of nomination and confirmation of director must be followed; thus, individual who was appointed acting director by President but whose appointment was not confirmed by Senate was not appointed lawfully to his post. Economic Opportunity Act of 1964, § 601(a), 42 U.S.C.A. § 2941(a); 5 U.S.C.A. § 101; U.S.C.A.Const. art. 2, § 2.

Alan B. Morrison, Washington, D. C., for plaintiffs.

Harold H. Titus, Jr., U. S. Atty., Robert S. Rankin, Jr., Asst. U. S. Atty., Washington, D. C., Harlington Wood, Jr., Asst. Atty. Gen., Harland F. Leathers, John M. Kelson, Dennis G. Linder, Attys., Dept. of Justice, Washington, D. C., for defendant.

OPINION

WILLIAM B. JONES, District Judge.

This action is brought by four United States Senators to remove the defendant, Howard J. Phillips, from his position as Acting Director of the Office of Economic Opportunity [OEO] because he has not been appointed by the President, and confirmed by the Senate, as Director of OEO, as is required by 42 U.S.C. § 2941(a) (1970). The plaintiffs, Senators Harrison A. Williams, Jr., Claiborne Pell, Walter F. Mondale, and William D. Hathaway are all members of the Senate Labor and Public Welfare Committee, with Senator Williams serving as Chairman of that Committee, which has legislative jurisdiction over OEO. Jurisdiction is based on the federal question statute, 28 U.S.C. § 1331(a) (1970). The case is now before the Court on the plaintiffs' motion for summary judgment [1] and the defendant's

1. This case was filed on March 14, 1973, eight days prior to the scheduled hearing on the cross-motions for summary judgment in Local 2677, A.F.G.E. v. Phillips, 358 F.Supp. 60, (D.D.C.1973), in which actions taken by the defendant Phillips to terminate certain OEO functions were enjoined as unlawful. Because the issue of the validity of Phillips' service in office was raised in that case, the plaintiffs in this case sought leave to file their motion for summary judgment so that it could be consolidated for hearing at the same time. Fed.R.Civ.P. 56(a) precludes the filing of a motion for summary judgment by the plaintiff until 20 days have elapsed from the time the complaint is filed unless the defendant files a motion for summary judgment within that time, and the plaintiffs' motion was not permitted to be filed. Their points and authorities were allowed to be filed as an

motion to dismiss for failure to meet the jurisdictional amount of $10,000, for lack of standing, and for failure to state a claim upon which relief may be granted. For the reasons set forth below, the Court finds no merit to the jurisdictional defenses of the defendant, and holds that the defendant is not serving validly in office and enjoins him from taking any action as Acting Director of OEO.

The defendant urges that the plaintiffs have failed to show that their complaint meets the jurisdictional amount of $10,000 required by 28 U.S.C. § 1331(a) (1970). In support of this argument the defendant contends that the injury alleged by the plaintiffs in their complaint, the denial of their opportunity to consider the defendant's qualifications for the position of Director of OEO (Complaint ¶ 10), is not measurable in dollars and cents and thus cannot meet the jurisdictional amount. McGaw v. Farrow, 472 F.2d 952 (4th Cir. 1973); Goldsmith v. Sutherland, 426 F.2d 1395 (6th Cir.), cert. denied, 400 U.S. 960, 91 S.Ct. 353, 27 L.Ed.2d 270 (1970). The plaintiffs, however, do not disagree with the $10,000 requirement, but assert they have met the test.

[1, 2] In cases in which purely injunctive relief is sought, the amount in controversy may be measured either by the value of the relief sought by the plaintiff or the cost of enforcing that right to the defendant. Tatum v. Laird, 144 U.S.App.D.C. 72, 444 F.2d 947 (1971), rev'd on other grounds, 408 U.S. 1, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972) (dictum); Hedberg v. State Farm Mutual Automobile Insurance Co., 350 F.2d 924 (8th Cir. 1965) (dictum). Although the Supreme Court has not spoken definitively on the issue, Flast v. Cohen, 392 U.S. 83, 103, 88 S.Ct. 1942, 1954, 20 L.Ed.2d 947 (1968), in discussing standing, noted that "the challenged program involves a substantial expenditure of federal tax funds," without reference to the value of the plaintiff's claim. In this case, the plaintiffs challenge the legal right of the defendant to administer a program with an appropriation of over 790 million dollars for fiscal 1973. Pub.L.No. 92-607, ch. 4, 86 Stat. 1503. Under these circumstances, the plaintiffs are found to have met the $10,000 requirement.[2]

The plaintiffs have brought this action in their capacity as United States Senators who are entitled to pass upon the qualifications of the Director of OEO in the confirmation process, both as members of the Labor and Public Welfare Committee and as members of the Senate as a whole (Complaint ¶ 10). The defendant challenges the standing of the plaintiffs to bring the action in that context because their interest as legislators in the subject mat-

amicus brief at the time of the oral hearing in *Local 2677*, *supra*. No decision on the legality of the defendant Phillips' service in office was rendered in *Local 2677*, and the motion for summary judgment was filed in this case on April 12, 1973, one day after the decision in *Local 2677*.

2. The plaintiffs may be found to have met the requirement in several other ways. From the time of filing suit until the end of the current fiscal year, the defendant would collect over $10,000 in salary, which he would not be entitled to if he were serving unlawfully in office.
Cases seeking injunctive relief in the first amendment area have also liberally construed the jurisdictional amount requirement. *E. g.*, Spock v. David, 469 F.2d 1047 (3d Cir. 1972). The plaintiffs here are arguably protecting a first amendment right to comment on the nomination of an OEO Director, as well as their right to pass on nominations of executive officers under Art. II, § 2 of the Constitution.
Finally, in valuing the rights of the plaintiffs, the words of Chief Judge Lumbard in Bivens v. Six Unknown Named Agents, 409 F.2d 718, 723 (2d Cir. 1969), rev'd on other grounds, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) are relevant:
> Few more unseemly sights for a democratic country operating under a system of limited governmental power can be imagined than the specter of its courts standing powerless to prevent a clear transgression by the government of a constitutional right of a person with standing to assert it.

ter of the controversy allegedly is not an injury in fact within the terms of Sierra Club v. Morton, 405 U.S. 727, 734–735, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). The Court holds that the plaintiffs have the requisite standing.

[3, 4] Six days after this suit was filed the Court of Appeals for the District of Columbia decided Mitchell v. Laird, 476 F.2d 533 (1973). In affirming the dismissal by the District Court of a suit brought by 13 members of the House of Representatives to enjoin the war in Indo-China, the Court of Appeals decided that the plaintiffs did have standing to assert that claim. The Court held that assuming that the war was illegal, that declaration would bear upon the duties of the plaintiffs as members of the House to impeach the defendants as well as their duties to consider and act on appropriations bills, or other legislative matters, such as raising an army, or the enactment of other civil or criminal legislation. In this case, a declaration that the defendant is unlawfully serving in office would bear upon the plaintiffs' duties to consider appropriations for OEO, or other legislative matters affecting OEO or the position of OEO Director. Moreover, the service by the defendant as Acting Director of OEO, rather than Director, does not remove the direct injury to the plaintiffs' alleged right to pass on the individual nominated to be Director. The injury is aggravated, if anything, because the Acting Director is performing the duties of the Director without the advice and consent which the plaintiffs would have been able to assert over an individual whose name had been submitted to the Senate for confirmation. Having rejected these jurisdictional defenses, the Court now turns to the merits of the case.

The Economic Opportunity Act of 1964, the substantive legislation creating OEO, requires that OEO "shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate." 42 U.S.C. § 2941(a) (1970). In addition, the Deputy Director and five Assistant Directors are all to be appointed by the President with Senate confirmation. *Id.*

It is undisputed that the defendant Phillips was appointed Acting Director of OEO on January 31, 1973, by the President.[3] On that same date, Phillip V. Sanchez, then OEO Director, in anticipation of the acceptance of his resignation, signed a delegation of his powers to the defendant pending the appointment of Sanchez's successor.[4] Phillips had been serving as an OEO Associate Director for Program Review, a post not subject to Senate confirmation. The defendant's name has not been submitted to the Senate for its advice and consent on an appointment as Director of OEO.[5] No provision is made anywhere in the Economic Opportunity Act of 1964, as amended, for the appointment of an Acting Director. From these undisputed facts it is urged that the defendant is illegally serving in office.

Article II, section 2, of the United States Constitution, provides that the President

> shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Ap-

3. 9 Weekly Comp. of Pres. Docs. 122 (1973). Although the defendant was appointed Acting Director of OEO on January 31, 1973, it would appear that he took action as Acting Director as early as January 29, 1973. The defendant issued on January 29 a memorandum regarding the "termination of section 221 [Community Action Agency] funding." That plan was enjoined by this Court in Local 2677, A.F.G.E. v. Phillips, 358 F.Supp. 60 (D.D.C.1973). Therefore the relief granted by the Court, *infra*, will date from January 29, 1973, rather than the putative appointment date of January 31, 1973.

4. The delegation is item 1 of exhibit B to the Court's request for filing of OEO delegations of authority.

5. Plaintiffs' Statement of Material Facts as to Which There Is No Dispute, No. 3. This statement was controverted by the defendant only as being irrelevant.

pointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Thus, the plaintiffs argue, the Constitution dictates that all federal officers not otherwise provided for in the Constitution shall be nominated by the President and appointed with the advice and consent of the Senate except as the Congress may otherwise provide by law for that power in the President or others. The OEO director is an officer of the United States and the Congress has not provided specifically for the position to be filled in any manner other than the nomination and confirmation process described in Article II. The plaintiffs would, however, find the authority to fill the vacancy created by Sanchez's resignation in the general law dealing with the filling of vacancies in office by the President (the Vacancies Act of 1868, as amended, 5 U.S.C. §§ 3345–49 (1970)).[6] But the plaintiffs assert that because the terms of that Act limit the term of appointments under it to 30 days, 5 U.S.C. § 3348, the defendant Phillips has been serving unlawfully in office since March 3, 1973, 30 days after his January 31, 1973, appointment as Acting Director.

The defendant counters with two different arguments: first, that the President has the constitutional power to appoint officers of the United States without Senate confirmation deriving from his obligation under Article II, section 3, to "take Care that the Laws be faithfully executed;" and, second, that the Vacancies Act is inapplicable on its face to the Director of OEO and thus was not required to be followed, as it was not, in this case. Because the main thrust of the defendant's argument has gone to the inapplicability of the Vacancies Act, that argument will be treated first.

[5] The basic argument is that because the Vacancies Act on its face is applicable only to Executive and military departments, the office of Director of OEO is not subject to its strictures because OEO is not an Executive or military department as those terms are defined in 5 U.S.C. §§ 101 and 102 (1970).[7] Certainly it is true that OEO is not an Executive or military department as those terms are defined. OEO is what section 104 of title 5 defines as an independent establishment—one in the Executive branch other than, with enumerated exceptions, an Executive or military department. But the facial inapplicability of the Vacancies Act to the appointment in question does not establish the legality of the appointment. The question remains, by what authority does the defendant serve in office if he was not appointed pursuant to the Vacancies Act.

[6] The constitutional provision governing the appointment of federal officials is clear in its mandate. Unless Congress has vested the power of appointment of an officer in the President, the Courts, or a Department head, he

6. Briefly, the Vacancies Act provides that when the head of an Executive or military department, or an officer of a bureau of an Executive or military department whose appointment is not vested in the department head, dies, resigns, or is sick or absent, his first assistant performs his duties until a successor is appointed or the absence or illness stops. The President may direct that another department head or officer subject to Senate confirmation may perform those duties instead of the first assistant. A vacancy caused by death or resignation can be filled through these provisions for 30 days. The Act provides that it is the exclusive method for filling vacancies covered by the Act except those occurring during a Senate recess.

7. The Executive departments are the 11 Cabinet departments. The military departments are the Army, Navy and Air Force.

may be appointed only with the advice and consent of the Senate, unless that body is in recess. Although no clear case interpreting this provision has arisen, there are several sources which favor that interpretation.

In Ex parte Siebold, 100 U.S. 371, 25 L.Ed. 717 (1880), the Court upheld the validity of an Act of Congress authorizing the appointment of supervisors of elections by circuit courts of the United States notwithstanding the claim that the duties of the supervisors were executive in character. The Court recognized that under Article II, section 2, of the Constitution, Congress had the power to vest by law the appointment of inferior officers of the federal government in the President alone, in the Courts, or in the heads of Departments. And it declared, with respect to the appointment of the supervisors, that "as the Constitution stands, the selection of the appointing power, as between the functionaries named, is a matter resting in the discretion of Congress." *Id.* at 397–398. *See also* United States v. Eaton, 169 U. S. 331, 343, 18 S.Ct. 374, 42 L.Ed. 767 (1898).

[7] Two opinions of the Attorney General contain similar language indicating that the President must obtain the advice and consent of the Senate on all appointments of officers of the United States [8] whose appointments have not been otherwise vested by Congress in the President, the Courts, or a Department head. In early 1885 a question arose as to whether the President or the Secretary of the Treasury had the power to appoint the assistant collector at the port of New York. Congress had provided previously that the office be filled by the Secretary. In the revision of the statutes, however, the provision was omitted and thus repealed, so that the office of assistant collector remained but without any statutory provision on the manner in which it was to be filled. The Attorney General advised the President that in the absence of any statutory provision, the power of appointment lay in the President with the advice and consent of the Senate as set forth in Article II, section 2, of the Constitution. 18 Op. Att'y Gen. 98 (1885).

Similarly, in 1886 the question was who should appoint the chief examiner of the Civil Service Commission. The act creating the position did not specify who had that power. The Attorney General reasoned that because the chief examiner of the commission would be an officer of the United States established by law, the power to fill the position would rest in the President subject to Senate confirmation. 18 Op. Att'y Gen. 409 (1886).

Ex parte Siebold, *supra*, and the opinions of the Attorney General give strong indication that in the absence or repeal of a statute vesting an appointment outside the nomination and confirmation process, that process is the exclusive means for appointing federal officers.

[8] The defendant, however, would answer the question of by what authority he does serve in office by finding in the President a direct constitutional power to appoint officers temporarily without restriction to Executive branch positions outside the Executive and military departments. This argument is premised on the words of Article II, section 3, of the Constitution, which obligate the President to "take Care that the Laws be faithfully executed." In support of that proposition two opinions of the Attorney General are cited. Neither supports the finding of such a temporary appointive power.

The first opinion, 6 Op. Att'y Gen. 357 (1854), concerned the appointment of Navy pursers in the "distant service." Two acts of Congress created a

8. The Director of OEO is undoubtedly an officer of the United States because of the provision requiring Senate confirmation. He is not a mere agent or employee who is not an officer and whose employment may be outside the confirmation process. *See* United States v. Hartwell, 73 U.S. (6 Wall.) 385, 18 L.Ed. 830 (1867); Burnap v. United States, 252 U.S. 512, 40 S.Ct. 374, 64 L.Ed. 692 (1920).

new requirem
be appointed
with the advi
ate except th
cumstance of
torney Gener
acts gave the
sue regulatio
ments in the
ently of the
for the Navy
third act. I
defendant a
has the inhe
porary appoi
quiring non

The secon
General cite
Att'y Gen.
power of the
temporarily
session by a
form the du
concluded t
the constitu
ry authority
cy occurrin
The opinion
pointment
here, of on
hold the pos
opinion, wa
situation.

Whatever
finding an
in the Pres
the defenda
ty that that
ists only i
claim has
ment of Ph
emergency
that there
no view o
such a pow

9. For the
at p. 9
in Suppor
miss and
tion for
U.S.C. §
present
pointed h
Director

new requirement that all Navy pursers be appointed by the President by and with the advice and consent of the Senate except those in the emergency circumstance of "distant service." The Attorney General concluded that these two acts gave the President the power to issue regulations concerning such appointments in the "distant service," independently of the power to issue regulations for the Navy granted the President by a third act. He did not conclude, as the defendant asserts, that the President has the inherent authority to make temporary appointments to all positions requiring nomination and confirmation.

The second opinion of the Attorney General cited by the defendant, 25 Op. Att'y Gen. 258 (1904), dealt with the power of the President to fill vacancies temporarily while the Senate was not in session by assigning one officer to perform the duties of another. The opinion concluded that the President had both the constitutional power and the statutory authority temporarily to fill a vacancy occurring during a Senate recess. The opinion was not directed to the appointment during a Senate session, as here, of one who was not an officer to hold the position and, as in the previous opinion, was addressed to an emergency situation.

Whatever the merits of the argument finding an interim appointment power in the President may be, it is clear from the defendant's own citation of authority that that power, if it exists at all, exists only in emergency situations. No claim has been made that the appointment of Phillips was necessitated by any emergency situation and the Court finds that there was none, and thus expresses no view on the existence or scope of such a power.

Several constitutional problems are presented by a temporary appointive power of the President as interpreted by the defendant. If the President has an inherent (or more properly, derivative) power to make temporary appointments of federal officers under his obligation to faithfully execute the laws, then the Vacancies Act would be unconstitutional. If the President has a constitutional power to make temporary appointments, then Congress cannot limit the exercise of that power as it has through the Act. But the defendant himself claims the power to temporary appointment only for those officers not covered by the Vacancies Act. For this Court to hold that the President has the constitutional authority to appoint temporary officers only if they are not covered by the Vacancies Act or similar legislation, see *infra*, would place a strange construction indeed on a constitutional power.

Moreover, a Presidential power to appoint officers temporarily in the face of statutes requiring their appointment to be confirmed by the Senate, such as is required for the OEO director by 42 U.S.C. § 2941(a) (1970),[9] would avoid the nomination and confirmation process of officers in its entirety. Constitutional provisions cannot be given such an interpretation.

[9] The plaintiffs urge that the Vacancies Act be held to apply to all Executive agency temporary appointments, as was the original Congressional intent.[10] This construction would avoid a potential constitutional conflict between the requirement that all officers be nominated by the President and confirmed by the Senate in the absence of contrary legislation, and the possible emergency power of the President to make temporary appointments argued for by the de-

9. For the defendant to claim, as is done at p. 9 of the Points and Authorities in Support of Defendant's Motion to Dismiss and in Opposition to Plaintiffs' Motion for Summary Judgment, that 42 U.S.C. § 2941(a) is inapplicable to the present case because the President appointed him Acting Director rather than Director is without merit. The appointment and confirmation process of Article II, section 2, of the Constitution cannot be so evaded.

10. Statements on the Senate Floor by Senator Trumbell, the principal Senate sponsor of the Act, indicate that it was to apply to all vacancies in the Executive branch requiring confirmation. 39 Cong. Globe S1163-64 (1868).

fendant. The position urged by the plaintiffs is unsound.[11]

The codification of title 5 of the United States Code in 1966, Pub.L. No. 89–554, 80 Stat. 378, which contains the Vacancies Act, was enacted into law two years after the passage of the Economic Opportunity Act of 1964, Pub.L. No. 88–452, 78 Stat. 519. The definition in 5 U.S.C. § 101, note 7, *supra*, of Executive department as used in the Vacancies Act did not include OEO. The Congress has amended section 101 twice since the codification and has not included OEO on either occasion.[12] Thus it cannot be assumed that Congress failed to include OEO in the terms of the Vacancies Act by mere oversight, and that Congress intends that the Act cover the OEO Director. The more reasonable interpretation is that Congress intended to foreclose the possibility of the Executive making a temporary appointment of the OEO Director.

Congress has shown through legislation other than the Vacancies Act that it knows how to provide for an acting administrator of Executive agencies not contained within the Executive departments. The Administrator of Veterans' Affairs, the head of the Veterans' Administration, is nominated by the President and confirmed by the Senate. 38 U.S.C. § 210(a) (1970). Section 210(d) of that title provides for the appointment of a Deputy Administrator by the Administrator, and further that:

> The Deputy Administrator shall perform such functions as the Administrator shall delegate and, unless the President shall designate another officer of the Government, shall be Acting Administrator of Veterans' Affairs during the absence or disability of the Administrator or in the event of a vacancy in the Office of Administrator.

Section 210(d) was added by Pub.L. No. 89–361, 80 Stat. 29, only six months prior to the codification of the Vacancies Act in title 5.

The Comptroller General, the head of the General Accounting Office, and the Deputy Comptroller General, are appointed by the President by and with the advice and consent of the Senate. 31 U.S.C. § 42 (Supp. I, 1971). In the event of the absence or incapacity of the Comptroller General, or during a vacancy in that office, the Deputy Comptroller General shall act as Comptroller General. *Id.* In addition to this method of temporarily filling vacancies, the Congress has provided in 31 U.S.C. § 43a (1970) that:

> The Comptroller General shall designate an employee of the General Accounting Office to act as Comptroller General during the absence or incapacity of the Comptroller General and the Assistant Comptroller General [now called the Deputy Comptroller], or during a vacancy in both of such offices.

In these statutes the Congress has provided a detailed ordering of authority in the event of a vacancy, and thus must it be presumed to know how to provide for that contingency outside the Vacancies Act.[13] The defendant contends in his post argument memorandum

11. It would appear that the defendant would not be validly serving in office even if the Vacancies Act were held to be applicable to OEO. The defendant has not succeeded to his post through either 5 U.S.C. § 3345 or 3346 because he concededly was not the first assistant to former Director Sanchez at the time of the appointment. No basis for the temporary appointment is found in § 3347 because the defendant admittedly was not an official whose appointment had been confirmed by the Senate. Finally, § 3349 is inapplicable because the Senate was in session on January 31, 1973, the date of the appointment.

12. Pub.L.No.89–670, § 10(b), 80 Stat. 948, added the Department of Housing and Urban Development and the Department of Transportation to the definition of Executive department. Pub.L.No.91–375, § 6(c)(1), 84 Stat. 775, deleted the Post Office Department from that definition when it was made an independent corporation.

13. In addition to the provisions for vacancies discussed in the text, there are several

that these statutes are a Congressional recognition of the President's inherent temporary power of appointment. But Article II, section 2, *supra*, clearly vests all appointments in the President subject to the advice and consent of the Senate, unless the Congress vests that power elsewhere by law. The vacancies statutes cited are clear examples of the vesting by the Congress of an appointive power in the President or Department head alone that would not otherwise exist. Congress has merely exercised the power conferred upon it by the Constitution.

[10] Thus the failure of the Congress to provide legislation for an acting director must be regarded as intentional. The Court holds that in the absence of such legislation or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed.[14] Therefore, the Court finds that the defendant Phillips was not appointed lawfully to his post as Acting Director of OEO. An injunction will issue to restrain him from taking any actions as Acting Director of OEO.

others, including some in which both the chief and deputy are appointed by the President by and with the consent of the Senate. The following list is not intended to be exhaustive, but merely illustrative: General Services Administration 40 U.S.C. §§ 751(b) and (c) (1970); Small Business Administration, 15 U.S.C. § 633 (b) (1970); Environmental Protection Agency, Reorganization Plan No. 3 of 1970, §§ 1(b) and (c), eff. Dec. 2, 1970, 84 Stat. 2086 (42 U.S.C. § 4321 note (1970)); Office of Telecommunications Policy, Reorganization Plan No. 1 of 1970, § 3, eff. Apr. 20, 1970, 84 Stat. 2083 (47 U.S.C. § 305 note (1970)); Action, the agency which administers Vista, the Peace Corps, and similar programs, Reorganization Plan No. 1 of 1971, §§ 1(b) and (c), eff. July 1, 1971, 85 Stat. 819 (42 U.S.C. § 2091 note (Supp. I, 1971)). The defendant urges at note 3 of his post argument memorandum that because the Executive proposed the above cited reorganization plans pursuant to the Reorganization Act of 1949, as amended, 5 U.S.C. § 901 et seq. (1970), those vacancy provisions were issued by the Executive rather than the Congress as part of the President's inherent temporary power of appointment. But the Reorganization Act gives those plans the effect of statutory law only upon action or inaction by the Congress, 5 U.S.C. § 906(a), and thus the mere proposal of the plan by the President is ineffective without Congressional approval. This in effect recognizes the absence of an inherent temporary power of appointment in the Executive.

14. The wisdom of the nomination and confirmation process, even in the light of the President's Executive powers, was pointed out by Alexander Hamilton in The Federalist No. 76. In answering critics of the Constitution who felt that the President should have the sole authority to appoint federal officials, Hamilton pointed out that the nomination and confirmation process did vest the power of choice in the President because "no man could be appointed but on his previous nomination, [and] every man who might be appointed would be, in fact, his choice." *Id.* at 89 (Tudor Pub. Co. ed. 1947). Hamilton pointed out further that the Senate would be reluctant to overrule nominations frequently because they could not be certain that any subsequent nominee would be one to their liking. Finally, he noted that the confirmation requirement would check the possible evil of vesting the appointment power solely in the President:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view of popularity. In addition to this, it would be an efficacious source of stability in the administration. *Id.* at 89.

dismissed, only 3 were discharged as "recovered." The bulk of the remainder were discharged with labels such as "improved" or "mentally ill—not a danger." [74]

Stigma is, of course, a double-edged blade, and the patient's perception of the phenomenon is also important. Even in the best of institutions the patient forcefully committed suddenly faces the regimented routine of ward life and daily confrontation with state employees, however capable, rather than family and friends.[75] These and other factors often cause him to demean himself and to magnify social ostracism.[76] The very fact that the new legislation has served to convince only one-half those receiving treatment to do so voluntarily suggests that archaic images remain.[77]

In *Winship*, the Court concluded that while the consequences of being adjudged a juvenile delinquent were not identical to being adjudged a criminal, the differences were not sufficient to support a distinction in the standard of proof. This was despite the fact that, unlike involuntary civil commitment, being adjudged delinquent did not deprive the child of his civil rights nor did the statute, which called for confidentiality, expose him to the stigma of a public hearing. We cannot help but conclude that the forcefully committed civil patient has at stake interests of equivalent proportions.

For the reasons hereinbefore stated, we reverse on the ground that the jury was not instructed to find, and did not find, beyond a reasonable doubt that John Ballay was both mentally ill and dangerous.

So ordered.

74. *See* Commission of Mental Health Statistical Report—Fiscal Year 1969, found in 1969 Senate Hearings, *supra* note 17, at 965–66. An additional 20 patients were discharged as "not mentally ill."

75. *Cf.* In re Gault, 387 U.S. 1, 27, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967).

Senator Harrison A. WILLIAMS, Jr. et al.
v.
Howard J. PHILLIPS, Acting Director, Office of Economic Opportunity, Appellant
No. 73-1676.

United States Court of Appeals, District of Columbia Circuit.

Argued June 21, 1973.

Decided June 22, 1973.

Action brought by the senator and others challenging the legality of defendant's service in his position as Acting Director of the Office of Economic Opportunity. The United States District Court for the District of Columbia, William B. Jones, J., 360 F.Supp. 1363, declared that defendant was serving illegally since he had not been nominated by the President and confirmed by the Senate, as required by the Constitution, and defendant filed a motion for a stay pending appeal. The Court of Appeals held that defendant failed to show sufficient likelihood of success on the merits to warrant a stay.

Motion denied and record remanded.

Courts ⇐405(15)

Acting Director of the Office of Economic Opportunity, who was found by the district court to be serving illegally in his position since he had not been nominated by the President and confirmed by the Senate as required by the Constitution, failed to meet his burden of showing that a stay pending ap-

76. *See, e. g.*, E. Goffman, *supra* note 69, at 354–56; Comment, 34 U.Chi.L.Rev., *supra* note 56, at 637–38.

77. *See* note 53 *supra*.

peal was justified, as he failed to show sufficient likelihood of success on the merits of his contention of presidential authority to make an interim appointment, not in an emergency situation, without Senate approval.

Stephen F. Eilperin, Atty., Dept. of Justice, for appellant. Judith S. Feigin and Robert E. Kopp, Attys., Dept. of Justice, entered appearances for appellant.

Alan B. Morrison, Washington, D.C., for appellee.

Harry Huge, Washington, D. C., for National Legal Aid and Defenders Association as amicus curiae.

Glenn R. Graves, Washington, D.C., for Local 2677, American Federation of Government Employees as amicus curiae.

Before WRIGHT, LEVENTHAL, and ROBINSON, Circuit Judges.

ORDER

PER CURIAM:

This cause came on for consideration of appellant's emergency motion for a stay pending appeal and appellees' opposition thereto, and the court heard argument of counsel. The District Court's order of June 11, 1973 declared that Howard J. Phillips, Acting Director of the Office of Economic Opportunity, is serving illegally in his position since he has not been nominated by the President and confirmed by the Senate, as required by Article II, Section 2 of the Constitution. The District Court enjoined Phillips from taking any further action as Acting Director of OEO.

Appellant having declined to submit the case on the merits for purposes of summary disposition, the sole issue we decide is whether appellant has met his burden of showing that a stay is justified. *See* Virginia Petroleum Jobbers Assn v. FPC, 104 U.S.App.D.C. 106, 110, 259 F.2d 921, 925 (1958).

We do not believe appellant has shown sufficient likelihood of success on the merits to warrant a stay. Art. II, § 2 of the Constitution unequivocally requires an officer of the United States to be confirmed by the Senate unless different provision is made by congressional statute. In the case of OEO, the pertinent enactment reinforces rather than diminishes the requirement of Senate confirmation. *See* 42 U.S.C. § 2941(a) (1970). The only issue is the existence of presidential authority to make an interim appointment without Senate approval. Under the legal theory accepted by the District Court, the President lacked authority to appoint an acting director of OEO, save in an emergency situation not here present.[1] Accordingly, the District Court concluded that appellant had served illegally in that position since the date of his appointment on January 29, 1973.

It could be argued that the intersection of the President's constitutional obligation to "take care that the laws be faithfully executed" and his obligation to appoint the director of OEO "with the Advice and Consent of the Senate" provides the President an implied power, in the absence of limiting legislation, upon the resignation of an incumbent OEO director, to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate. Even if the court should sustain such a view, in its disposition on the merits, that would not establish that the President was entitled, for a period of four and a half months from the date the President obtained the

1. The District Court did conclude that there was some scope, even in the absence of statute, for temporary appointments to meet emergency situations. Appellant argued that this was contrary to the view expressed by Mr. Justice Douglas in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 629, 72 S.Ct. 863, 96 L.Ed. 1153 (1952) (concurring opinion), but the traditional view is that an emergency creates the condition for the exercise of power.

resignation of the incumbent director,[2] to continue the designation of Phillips as acting director without any nomination submitted for Senate consideration. The Government concedes that the President cannot designate an acting officer indefinitely without any presentation to the Senate for confirmation. An indication of the reasonable time required by the President to select persons for nomination appears in the 30-day period provided in the Vacancies Act for temporary appointments of Executive Department officers pending nomination to the Senate, *see* 5 U.S.C. § 3348(1970)). Appellant has not met his burden of demonstrating that the court, on the merits, is likely to hold that the President was entitled to hold Mr. Phillips in office for a four-and-a-half-month period without any nomination. Assuming, without deciding, that the court on the merits might disagree with the District Court's approach and might conclude that Phillips' appointment was not invalid *ab initio*, this would not undercut the determination as to the prospective invalidity of his holding office.

Appellees' standing to maintain this action was challenged in the District Court, but while appellant technically claims to "preserve" the standing issue here, it is not urged as a ground for stay.[3] We therefore do not reach the standing question.

Appellant and *amici curiae* also question the injunctive relief granted by the District Court which barred appellant from further serving as acting director of OEO. Some of these objections apparently seek clarification rather than reversal of the District Court's injunction. Other objections are based upon allegations of irreparable injury to the agency, its programs, and third parties dealing with the agency. These allegations raise questions of fact concerning the actual effect of the District Court's injunction, questions which we are unable to resolve on the record before us. It appearing that the District Court has not yet had an opportunity fully to consider these matters, we think it best to deny the stay and remand the record to the District Court where these claims of injury can be heard. Motions might be made for clarification or modification of the court's injunction, or for further equitable relief in other related cases. The District Court may also consider, despite its declaration that appellant is serving illegally, whether to terminate or give prospective effect to its injunction, or to provide time to conform to the Constitution's requirements.[4] If the District Court concludes that circumstances warrant further relief in this case, it may amend its order.[5]

Wherefore it is ordered by this court that appellant's Emergency Motion for Stay Pending Appeal be, and it is hereby, denied, and it is further ordered by this court that the record in this case be, and it is hereby, remanded to the

2. Reference is to the four-and-a-half-month period between that date and the date of the District Court's decree.

3. At oral argument on the motion for stay, the Government was specifically asked whether it was now pressing that point, in view of the fact that the same issue on the merits is also raised in another appeal now pending before this court in a case in which the plaintiffs' standing to sue rests on firm ground. *See* Local 2677 v. Howard J. Phillips, No. 73-1551, appeal docketed May 15, 1973, where appellant labor organization represents employees of OEO whose jobs are directly affected by actions taken by appellee. Government counsel replied in the negative, although it was not to be taken as conceding standing in the case at bar. The *Local 2677* case and the case at bar will be set for argument to the court on the merits on the same date.

4. *See, e. g.*, Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955); Hecht Co. v. Bowles, 321 U.S. 321, 329-330, 64 S.Ct. 587, 88 L.Ed. 754 (1944).

5. In the interest of justice, 28 U.S.C. § 2106 (1970), and the public interest, we see no reason to require the formality of a notification by the District Court, followed by a formal remand of the case to permit the entry of such amendment, under the normal procedure, *see* Smith v. Pollin, 90 U.S.App.D.C. 178, 194 F.2d 349 (1952).

District Court, with leave to the District Court to reconsider or amend its order if it be so advised. When the District Court determines it no longer has need for it, the Clerk of the District Court is directed to return the record to this court.

NATIONAL PETROLEUM REFINERS ASSOCIATION et al.

v.

FEDERAL TRADE COMMISSION et al., Appellants.

Environmental Defense Fund, Inc., Consumers Union, and Consumer Federation of America, Intervenors-Appellants.

No. 72-1446.

United States Court of Appeals, District of Columbia Circuit.

Argued Sept. 12, 1972.

Decided June 27, 1973.

Rehearing Denied Aug. 6, 1973.

Suit questioning authority of Federal Trade Commission to promulgate trade regulation rules. The United States District Court for the District of Columbia, Aubrey E. Robinson, Jr., J., 340 F.Supp. 1343, granted plaintiff's motion for summary judgment, and the Commission appealed. The Court of Appeals, J. Skelly Wright, Circuit Judge, held that Federal Trade Commission Act conferred on Federal Trade Commission the authority to promulgate trade regulation rules which have effect of substantive law.

Reversed and remanded.

1. Trade Regulation ⇦745

Federal Trade Commission is creation of Congress and extent of its powers can be decided only by considering powers Congress specifically granted it in light of statutory language and background. Federal Trade Commission Act, § 1 et seq., 15 U.S.C.A. § 41 et seq.

2. Statutes ⇦195

Maxim expressio unius est exclusio alterius is increasingly considered unreliable in statutory construction.

3. Trade Regulation ⇦745

Federal Trade Commission has responsibility to protect consumer from being misled by governing conditions under which goods and services are advertised and sold to individual purchasers. Federal Trade Commission Act, §§ 1 et seq., 5, 6(g), 15 U.S.C.A. §§ 41 et seq., 45, 46(g).

4. Statutes ⇦181(2)

In determining legislative intent, court's duty is to favor interpretation which would render statutory design effective in terms of policies behind its enactment and to avoid interpretation which would make such policies more difficult of fulfillment.

5. Statutes ⇦184

Where statute is said to be susceptible of more than one meaning, court must not only consult its language but must also relate interpretation provided to felt and openly articulated concerns motivating law's framers.

6. Trade Regulation ⇦808

Defendant in enforcement proceeding by Federal Trade Commission must be given opportunity to demonstrate that special circumstances of his case warrant waiving rule's applicability. Federal Trade Commission Act, § 5, 15 U.S.C.A. § 45.

7. Trade Regulation ⇦747

Any rules adopted by Federal Trade Commission as part of carrying out its duties to prevent unfair methods of competition are subject to judicial review testing their legality and insuring that they are within scope of broad statutory prohibition they purport to define. Federal Trade Commission Act, §§ 5,

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-774

REGULATION Q EXTENSION

OCTOBER 28, 1977.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. REUSS, from the Committee on Banking, Finance and Urban Affairs, submitted the following

REPORT

together with

SUPPLEMENTAL AND ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 9710]

The Committee on Banking, Finance and Urban Affairs, to whom was referred the bill (H.R. 9710) to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, to promote the accountability of the Federal Reserve System, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

On the first page, line 7, strike out "1979" and insert "1978".

Page 2, strike out lines 9 and 10 and insert the following:

GENERAL POLICY: CONGRESSIONAL REVIEW

SEC. 2A. The Board of Governors of the Federal Reserve System

Page 10, line 23, strike out "attached" and insert "attacked".

INTRODUCTION

On October 26, 1977 the Committee on Banking, Finance and Urban Affairs reported H.R. 9710 to the House by a unanimous vote of 41 to 0. The bill consists of three titles, a 1-year extension of the authority to regulate interests rates on savings deposits (regulation Q),

29-006 O

the Federal Reserve Reform Act which passed the House on September 12, 1977, without a dissenting vote, and two amendments to the Bank Holding Company Act.

Title I—Extension of Regulatory Rate Control Authority

In 1966, with the enactment of Public Law 89–597, the Congress provided authority to various Federal financial regulatory agencies to establish flexible ceilings on rates paid by financial institutions on time and savings deposits. This authority is commonly known as regulation Q. The most recent extension was provided by Public Law 95–22 continuing present authority to December 15, 1977.

The original basis for enacting flexible rate control authority was a finding by Congress that interest rate competition was putting an enormous upward pressure on interest rates paid on savings accounts by thrift institutions. Since thrift institutions are limited by law to the relatively lower yielding long-term residential mortgage investments, they have much more restrictive limitations on the rate payable on savings than a commercial bank. Thus, to insure a steadier flow of deposits in thrift institutions whose primary reason for existence is to supply funds for home mortgages financing, the Congress authorized the establishment of flexible interest rate ceilings on the rates paid by financial institutions.

Title II—Federal Reserve Reform Act

The Federal Reserve consists of three basic elements: its member commercial banks, the 12 regional Reserve banks, and the Board of Governors. The Board and Reserve banks exercise broad supervisory and regulatory powers over member banks. Yet only three of the nine directors of each Reserve bank now are elected as representatives of the public at large. Three of the remaining six represent the banks themselves and the other three "commerce, agriculture or some other industrial pursuit."

The Federal Reserve, acting primarily through the System's Federal Open Market Committee, determines the nation's monetary policy, which affects every aspect of American life. Yet existing law fails to provide for regular congressional-Federal Reserve dialogs over monetary policy.

Under existing law, the timing of the President's appointment to a 4-year term of Chairman of the Board of Governors of the Federal Reserve is left to chance, and this appointment is not subject to Senate confirmation.

Finally, Federal Reserve officers and employees are not covered by current conflict of interest statutes which apply to nearly all other Government agencies.

Title II sets forth clear guidelines for monetary policy and establishes regular oversight hearings focused on the Federal Reserve's plans for the growth of the monetary and credit aggregates during the current year and its expectations for the Nation's economic performance. It doubles the number of Reserve bank directors who will represent the public at large. It regularizes the appointment of the Federal Reserve Board's Chairman and Vice Chairman in relationship

to the President's term of office, and requires Senate confirmation of these appointments. Finally, it extends current conflict of interest statutes to Federal Reserve officers and employees.

In these ways, Title II will improve the conduct of monetary policy, increase its coordination with fiscal policy, increase the accountability of the Federal Reserve officers and employees, and increase the public's representation in the Councils of the Federal Reserve System and its understanding and trust of the System's operations.

History

The concerns about the Federal Reserve which title II deals with have been publicly discussed in a variety of forums for many years. The Hoover Commission report of 1949 dealt with them. So did the report of the Commission on Money and Credit in 1961. In addition, these concerns have been aired during numerous hearings before this and other committees of the Congress in past years.

In March 1975, Congress passed House Concurrent Resolution 133 expressing the sense of the Congress that monetary policy be conducted so as to "maintain longrun growth of the monetary and credit aggregates commensurate with the economy's longrun potential to increase production so as to promote effectively the goals of maximum employment, stable prices, and moderate longterm interest rates." In addition, the resolution called for regular hearings, alternating between the House and Senate Banking Committees, at which spokesmen of the Federal Reserve would disclose the System's "objectives and plans with respect to the ranges of growth or diminution of monetary and credit aggregates in the upcoming 12 months."

In the second session of the 94th Congress, the House passed by a vote of 279 to 85. H.R. 12934, which would have made permanent the regular oversight hearings on the conduct of monetary policy first established pursuant to the resolution. Because of time pressures, the Senate adjourned before taking action on this bill. One June 6, 1977, Congressman Henry S. Reuss introduced H.R. 8094 providing for this and other purposes. Meanwhile, on April 18, 1977, Congressman Parren J. Mitchell introduced H.R. 6273 to provide for Senate confirmation of the appointments of the Federal Reserve Board Chairman and Vice Chairman and to relate their terms to that of the President. Hearings were held on H.R. 6273 on June 23, 1977 and on H.R. 8094 on July 18 and 26, 1977. H.R. 8094 was marked up by the Committee on Banking, Finance, and Urban Affairs on July 27, and 28, 1977. The provisions in H.R. 6273 in regard to appointment and confirmation of the Federal Reserve Board Chairman and Vice Chairman were incorporated into H.R. 8094 by amendment. The amended bill, H.R. 8094, was reported by your committee by a vote of 40 to 0.

What the Title Would Do

1. Establish clear guidelines for the conduct of monetary policy and make permanent and expand the congressional-federal reserve quarterly dialogue on monetary policy

Under House Concurrent Resolution 133, Federal Reserve Chairman Arthur Burns has testified quarterly before the House and Senate

Banking Committees to discuss "objectives and plans with respect to ranges of growth or diminution of the monetary and credit aggregates in the upcoming 12 months."

Dr. Burns has spoken of the value of these quarterly dialogs. In testimony on this bill on July 26, in response to a question, he said:

> Now you ask what has it accomplished. Well, I think it has accomplished two things. At least two things that I believe have been beneficial. We in the Federal Reserve, because of that resolution, are perhaps a little more systematic in our monetary discussion than we previously were, or might, otherwise have been. And I learned from members of the committee, and I would like to think that now and then, one or another member of the committee may learn something from me or from my colleagues. So, I think it has been useful, yes.

In testifying on proposed legislation, Dr. Burns said the Board of Governors recommends that the language providing for quarterly hearings follow closely the "carefully framed" and "thoroughly tested" language of House Concurrent Resolution 133. House Concurrent Resolution 133 expressed the sense of Congress that the Board of Governors and the Federal Open Market Committee "maintain long-run growth of the monetary and credit aggregates commensurate with the economy's longrun potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates." That language is repeated in title II. In your committee's judgment, these goals are mutually compatible.

Title II also repeats the language of the resolution which calls for routine quarterly testimony by the Federal Reserve of "objectives and plans with respect to ranges of growth or diminution of the monetary and credit aggregates in the upcoming 12 months." Experience with this language leads us now to enlarge modestly the areas of discussion at these oversight hearings. House Concurrent Resolution 133 does not require the Federal Reserve to assess the impact of its monetary targets on specific elements of the economy such as production, employment or prices. In fact, Chairman Burns under questioning has often supplied evaluation of these elements. Such information should be made a regular part of future discussions.

In addition to requiring the Board of Governors to consult with the Congress on "objectives and plans with respect to the ranges of growth or diminution of monetary and credit aggregates in the upcoming 12 months," as is required in House Concurrent Resolution 133, this title adds: "taking into account past and prospective developments with respect to production, employment and prices."

To take into account these ultimate goals of economy policy—jobs and prices—requires discussion of such matters as fiscal policy, monetary velocity, and interest rates, but the bill does not require the Federal Reserve to make explicit projection with respect to these matters.

In the hearings, Dr. Burns stated that while he would object to being required to "quantify" velocity in specific numbers, he has often testified on expectations for velocity "in general terms" and would not object to being required to give his views on monetary velocity, as he

did in the latest quarterly hearings on the conduct of monetary policy, July 29 of this year.

In the committee's markup session a discussion ensued which makes it clear that interest rates also will inevitably be part of the discussion.

Chairman Reuss noted that "moderate long-term interest rates" is stated as a "goal" of monetary policy and said that "when the Federal Reserve focuses on prospective developments in production, employment and prices, it has to look at interest rates. They are a price; they are a factor in production; and they are eminently important in employment."

Mr. Stanton, ranking minority member and author of the language adopted, stated:

> If you're taking the past and the future the way we are doing now, (including) prices, you have got to take into consideration interest rates and everything else. We are talking about the economy in general.

Again, Mr. Stanton stated that in his view, as in that of Chairman Reuss, it is "implicit" that interest rates be taken into account in the quarterly dialog, when moderate long-term interest rates are stated as a goal of monetary policy. The requirement that the consultation with Congress take into account developments in production, employment and prices, he said, means that "certainly interest rates, every facet of the economy, has to be taken into consideration."

With all that is implicit in a full discussion of these broad measures of economic performance, Congress and the public are assured of a fuller understanding of the impact of the Fed's monetary decisions on the economy.

The quarterly hearings also provide a forum for two-way discussion between Congress and the Federal Reserve on what monetary policies are needed to achieve national economic goals. The airing of these issues should also lead to better coordination of fiscal and monetary policies.

2. BROADEN THE ECONOMIC INTEREST OF FEDERAL RESERVE BANK DIRECTORS

Under present law, the 9 directors of each of the 12 Federal Reserve Banks have unduly narrow backgrounds. Commercial banks elect six of the nine—three class A directors (always bankers) as their direct "representatives", and three class B directors from "commerce, agriculture or some other industrial pursuit". The three class C directors are chosen by the Federal Reserve Board of Governors, with nothing said as to who they may be.

As the Banking Committee staff study—"Federal Reserve Directors: A Study of Corporate and Banking Influence", August 1976—disclosed, this has produced a representation overly banker oriented at the expense of other groups. Furthermore, it has resulted in the virtual exclusion of women, blacks, and representatives of labor unions, consumer interest organizations and nonmanagerial and nonproducer interest groups. Currently, for example, out of 108 Reserve bank directors only 4 are women and only 3 are minority persons.

The title should help to remedy the situation with respect to exclusion of women and, blacks, by requiring that all directors—A, B, and

C—be chosen "without discrimination on the basis of race, creed, color, sex, or national origin," and by broadening economic representation.

As to economic representation, the three class A directors would be left as they are now—bankers. Class B directors would be specifically designated "public" and be broadened from the present "commerce, agriculture or some other industrial pursuit" to "with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor and consumers." It is archaic to concentrate on "commerce, agriculture or some other industrial pursuit" when service industries are steadily becoming more prominent than the purely industrial pursuits which were in everyone's minds in 1913 when the Federal Reserve Act was written. It also introduces labor and consumers as groups of our citizenry whose economic interests entitle them to seats on the Federal Reserve bank boards. The same language as to qualification will apply to the class C directors, who will continue to be chosen by the Board of Governors. Dr. Burns stated in hearings July 26 that the Board of Governors endorses this proposed broadening in representation of the public on Reserve bank boards, and the administration has no objection.

3. REQUIRE SENATE CONFIRMATION OF THE CHAIRMAN OF THE BOARD OF GOVERNORS, AND PROVIDE FOR COORDINATING THE CHAIRMANSHIP WITH THE TERM OF THE PRESIDENT

Under existing law, members of the Federal Reserve Board of Governors, who serve 14-year terms, are subject to Senate confirmation at the time of their appointment. One of the Board members is designated by the President to serve as Chairman for a 4-year term, but without Senate confirmation. Thus, the President can designate as Chairman someone who may have been confirmed by the Senate years earlier and is not questioned again, even though he or she is assuming a position far more important than the one to which he or she was confirmed. Title II would make the President's choice of Chairman, and also of Vice Chairman, subject to the advice and consent of the Senate. This takes effect in February 1982, and would not apply to the appointment of the Chairman now scheduled for February 1, 1978. The Board of Governors has no objection to Senate confirmation of the Board Chairman and Vice Chairman.

Further, the title provides that the terms of the Chairman and Vice Chairman shall always begin on a date certain—1 year and 12 days after inauguration of the President—and that vacancies which occur during a term will be filled only for the unexpired portion of the term.

Under present law the Chairman and Vice Chairman are appointed for 4-year terms beginning when they are appointed, regardless of whether their predecessor has served a full 4-year term. Thus, the question of when a President is able to appoint a Chairman and Vice Chairman in his term is completely haphazard. If by chance the Chairmanship becomes open only shortly before a President's first term expires, a new President would not have a chance to appoint a Chairman of his choice until almost the end of his first term. This could throw the appointment into election year politics. Furthermore, if by chance the Chairmanship becomes open in an odd-numbered year when there is no automatic vacancy on the Board of Governors, the President could have to select the Chairman from among only

the seven sitting Governors (including the Governor whose term as Chairman has just expired). Both election year appointments and appointments restricted to the seven sitting Governors have occurred in the past. Title II would prevent any recurrence by setting the terms of the Chairman and Vice Chairman to begin 1 year and 12 days after inauguration of the President.

In hearings held before the Domestic Monetary Policy Subcommittee, Chairman Burns, reversing a previous position, expressed his personal opposition to this provision, but not that of the Board. Under questioning he stated that at least some current Board members favored the provision. Furthermore, the subcommittee solicited views from many outside experts including former Federal Reserve officials. Overwhelmingly they supported regularizing appointment of the Chairman and Vice Chairman of the Federal Reserve Board as soon after the President is inaugurated as a vacancy on the Board is scheduled to occur. Those in support include former Vice Chairman of the Federal Reserve Board, J. Louis Robertson, former Governors Frederick L. Deming and Robert C. Holland, former Reserve bank presidents George H. Ellis, Alfred Hayes, Charles J. Scanlon and Allan Sproul, and economists George L. Bach and Milton Friedman.

Finally, it is noteworthy that in the past former Federal Reserve Board Chairman William McChesney Martin has supported coordinating the term of the President and Federal Reserve Chairman. This provision to coordinate the terms of the President and Federal Reserve Chairman with a 1-year lag, also takes effect in February 1982. The administration has no objection to Senate confirmation and coordination of the chairmanship with the term of the President.

4. PROHIBIT FEDERAL RESERVE OFFICERS, EMPLOYEES, AND DIRECTORS FROM ACTING WHERE THEY HAVE A CONFLICT OF INTEREST

Under existing law, employees and officers of the U.S. Government may not participate in any matter before the Government in which they or a member of their family or business have an interest, unless there is first a full disclosure of this interest and an official written determination by an official that this interest is not substantial. The Federal Reserve is not covered under existing law. Title II extends this prohibition to Federal Reserve bank officers, employees and directors. The administration has no objection to this provision.

TITLE III—BANK HOLDING COMPANY AMENDMENTS

This title contains amendments to the Bank Holding Company Act which the Federal Reserve Board has requested in its legislation recommendations to Congress each year since 1971. Your committee agrees with the Federal Reserve's request for expeditious consideration of these two provisions, which will allow increased regulatory flexibility in certain financially sensitive or emergency situations.

Section 301 of the bill would permit the Federal Reserve Board to extend for 3 successive 1-year terms the current 2-year period within which a holding company or bank must divest shares of another bank acquired in the regular course of securing or collecting a debt previously contracted in good faith. Thus, the divestiture period may be extended from 2 years to 5 while at the same time providing the Fed-

eral Reserve the necessary authority to insure that the applicant is taking all necessary steps to divest in a timely manner.

The problem addressed by this provision arises when a holding company acquires the stock of a bank to satisfy a debt on which the debtor has defaulted. Under present law, the holding company must sell such stock within 2 years, often under "fire sale" conditions. Section 301 would permit the Federal Reserve to extend this period so that the holding company can sell the stock in an orderly fashion.

The Federal Reserve Board identified three holding companies which would be affected by this provision, while a fourth situation was discussed in testimony before the Senate Banking Committee earlier this year. The affected institutions are:

Union Planters Corp., Memphis, Tenn.
First Commerce Corp., New Orleans, La.
The Marine Corp., Milwaukee, Wis.
United Bank of Denver, Denver, Colo.

Similar situations are almost certain to arise in the future.

Sections 302 and 303 would permit the Federal Reserve to dispense with the 30-day notice period during which the Comptroller or the State bank supervisory authority and the Department of Justice have to comment on the acquisition of a bank by a holding company where immediate action is necessary to prevent the probable failure of the bank to be acquired. Under present law, the Federal Reserve Board must wait 30 days before it can arrange the formal takeover of a failing bank by a holding company. This contrasts sharply with the procedure under the Bank Merger Act which permits the regulatory authorities to move in without delay to arrange an acquisition of a failing bank by another bank.

There have been nine instances since 1973 where a waiver of the 30-day notice requirements could have been utilized to good advantage by the Board. In these cases, after Board approval of a bank holding company takeover of a failing bank or financially troubled bank, the 30-day notice requirements caused significant difficulties in arranging for the takeover of the troubled institutions. The following are brief descriptions of the nine cases:

1. Applications by Banco Union, C.A., and Consorcio Financerio Union, S.A., Caracas, Venezuela to acquire Chelsea National Bank, New York, N.Y. when the Comptroller of the Currency declared an emergency situation.

2. Application by Ancorp Bancshares, Inc., Chattanooga, Tenn. to acquire Hamilton Bank of Johnson City, Johnson City, Tenn. from the Trustee in Bankruptcy for Hamilton Bancshares, Inc.

3. Application by First City Bancorporation, Inc., Houston, Tex. to acquire First City Bank—Northeast, N.A., Houston, Tex. which was organized to purchase the assets and assume the liabilities of Northeast Bank of Houston, a failed bank.

4. Application of Tennessee National Bancshares, Inc., Maryville, Tenn. to acquire Citizens State Bank, McMinnville, Tenn. and the Bank of Cannon County, Woodbury, Tenn, as a result of a hearing of the Bankruptcy Court regarding Hamilton Bancshares, Inc.

5. Application of Banco Central, S.A., Madrid, Spain to acquire First National Bank of Puerto Rico, Hato Rey, Puerto Rico which was in imminent danger of failing.

6. Application of Landmark Banking Corp., Fort Lauderdale, Fla., to acquire Bank of Pompano Beach, N.A., Pompano Beach, Fla., the successor to the Security State Bank of Pompano Beach, Fla. which the Comptroller of the State of Florida concluded was in need of immediate regulatory attention.

7. Applications of Southeast Banking Corp., Miari, Fla. and its wholly-owned subsidiary, Southeast Acquisition Co., Miami, Fla. to acquire Palmer Bank Corp. and its subsidiaries, Palmer Investment Advisory Co. and Coastal Mortgage Co., all of Sarasota, Fla. considered by the Board and the Comptroller of the Currency as a failing company.

8. Application of Bank of Nova Scotia, Toronto, Canada to acquire Banco Mercantil de Puerto Rico, San Juan, Puerto Rico which was in imminent danger of failing.

9. Application of United Banks of Colorado, Inc., Denver, Colo. to acquire United Bank of Skyline, N.A., Denver, Colo. after the bank's predecessor was closed.

Statements Required in Accordance With House Rules

In accordance with clauses 2(l)(2)(B), 2(l)(3), and 2(l)(4) of rule XI and clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made:

COMMITTEE VOTE (RULE XI, CLAUSE 2(l)(2)(B))

H.R. 9710 was favorably reported out of committee by a rollcall vote on October 26, 1977, with 41 votes cast for and 0 votes cast against reporting the bill.

The following committee members cast votes for reporting the bill: Representatives Reuss (by proxy), Ashley (by proxy), Moorhead, St Germain, Gonzalez, Minish, Annunzio, Hanley, Mitchell (by proxy), Fauntroy (by proxy), Neal, Patterson, Blanchard, LaFalce (by proxy), Spellman (by proxy), AuCoin, Tsongas, Derrick (by proxy), Hannaford, Evans, Allen, D'Amours, Lundine, Pattison, Cavanaugh, Oakar (by proxy), Mattox, Barnard, Watkins, Stanton, Brown (by proxy), Wylie, Rousselot, McKinney, Hansen (by proxy), Hyde (by proxy), Kelly, Grassley, Fenwick (by proxy), Leach, Evans (Del.), and Caputo.

The following committee members were absent: Representatives Gonzalez, Hubbard, Badillo, Vento, Steers, and Hollenbeck.

OVERSIGHT FINDINGS (RULE XI, CLAUSE 2(l)(3)(A) AND RULE X, CLAUSE (b)(1))

The Congress last extended the authority for the flexible regulation of interest rates (regulation Q) in April of this year. The committee believes that this authority continues to be necessary to insure economic stability.

The committee held hearings on July 18 and 26, 1977 on the provisions of title II. Testimony was heard from Representative Jim Wright; the Chairman of the Federal Reserve Board, Arthur Burns; and from public witnesses. The committee finds that title II is necessary to ensure the accountability of the Federal Reserve System to the public and to Congress.

The Subcommittee on Financial Insitutions Supervision, Regulation and Insurance held hearings on the provisions of title III in conjunction with its consideration of the Safe Banking Act of 1977. The Federal Reserve Board has included these provisions in its legislative requests to Congress each year since 1971. The committee believes that these provisions are necessary to permit the Board to deal with certain emergency situations which have been brought to the committee's attention.

ESTIMATE OF COSTS TO BE INCURRED (RULE XIII, CLAUSE 7(a)(1))

The committee estimates that no additional costs will be incurred as a result of the enactment of this legislation.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974 (RULE XI, CLAUSE 2(l)(3)(C))

The Congressional Budget Office has submitted the following report:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., October 27, 1977.

Hon. HENRY S. REUSS,
Chairman, Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 9710, as ordered reported by the Committee on Banking, Finance and Urban Affairs, October 26, 1977. This bill extends for 1 year the regulatory authority to set interest rates on deposits in depository institutions, contains provisions to promote the accountability of the Federal Reserve System and amends certain laws affecting bank holding companies.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ROBERT A. LEVINE,
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT STATEMENT (RULE XI, CLAUSE 2(l)(4))

The committee believes that enactment of this legislation will have no adverse impact on inflationary trends.

SECTION-BY-SECTION SUMMARY

TITLE I—REGULATION OF INTEREST RATES

Section 101. Extends regulation Q until December 15, 1978.

TITLE II—AMENDMENTS TO THE FEDERAL RESERVE ACT

Section 201. The short title of the bill is the "Federal Reserve Act of 1977."

Section 202. This section requires the Board of Governors of the Federal Reserve System and the Federal Open Market Committee (FOMC) to maintain the longrun growth of the monetary and credit aggregates commensurate with the economy's production potential to promote maximum employment, stable prices, and moderate long-term interest rates. The Board of Governors is required to consult with Congress at semiannual hearings before the House Committee on Banking, Finance and Urban Affairs, and the Senate Committee on Banking, Housing, and Urban Affairs about the Board's and the FOMC's objectives and plans with respect to the ranges of growth or diminution of monetary and credit aggregates for the upcoming 12 months, taking into account past and prospective developments in production, employment and prices at the hearings. The bill does not require the Board and the FOMC to achieve projected rates of growth or diminution of the money supply if they cannot or should not be achieved because of changing conditions.

Section 203. This section requires that all Federal Reserve bank directors be chosen "without discrimination on the basis of race, creed, color, sex, or national origin." Class B and C directors would be designated as "public" and be chosen "with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor and consumers." The bill would not chnage the economic representation for class A directors, now all bankers.

Section 204. This section requires Senate confirmation of the Chairman and Vice Chairman of the Board of Governors beginning in February of 1982. The section also provides that the terms of the Chairman and Vice Chairman will begin 1 year and 12 days after the President's inauguration. Vacancies which occur during a term will be filled only for the unexpired portion of the term.

Section 205. This section puts Federal Reserve bank directors, officers and employees under the conflict of interest provision, 18 U.S.C. 208, which applies to all other Federal employees. Section 208 already applies to the Board of Governors and its staff.

Section 206. References to the Federal Reserve Act in this bill are to the Feedral Reserve Act as amended through 1974.

TITLE III—AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956

Section 301. Authorizes a bank holding company to retain shares in a bank acquired in connection with defaults on debts previously contracted for a period of 5 years and a company acquiring such shares would not be required to be registered as a bank holding company for 5 years. Section 301 also makes explicit that shares acquired by nonbanks as well as banks in nonbank companies may be held for (a period not to exceed) 5 years before they are required to be divested.

Section 302. Would amend section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) to allow the Federal Reserve Board to shorten the time requirements for notice to the respective primary bank supervisory authority from 30 to 10 days where the Board finds that an emergency exists requiring expeditious action.

Under this legislation, where the Board finds that it must act immediately to prevent a probable failure of a bank or bank holding company, the Board may dispense with all notice requirements, and

the Board may act immediately with regard to any such merger, acquisition, or consolidation application.

Section 303. Would amend subsection (b) of section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) to shorten from 30 days to 5 days the Justice Department's period for comment on an approved acquisition where an emergency exists requiring expeditious action. In the case of a probable failure the Board may act immediately to effectuate an acquisition.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 7 of the Act of September 21, 1966

AN ACT To provide for the more flexible regulation of maximum rates of interest or dividends payable by banks and certain other financial institutions on deposits or share accounts, to authorize higher reserve requirements on time deposits at member banks, to authorize open market operations in agency issues by the Federal Reserve banks, and for other purposes

SEC. 7. Effective December 15, [1977] *1978*:

(1) So much of section 19(j) of the Federal Reserve Act (12 U.S.C. 371(b)) as precedes the third sentence thereof is amended to read as it would without the amendment made by section 2(c) of this Act.

(2) The second and third sentences of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) are amended to read as they would without the amendment made by section 3 of this Act.

(3) The last three sentences of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) are repealed.

(4) Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is repealed.

Federal Reserve Act

* * * * * * *

GENERAL POLICY: CONGRESSIONAL REVIEW

SEC. 2A. The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate log-term interest rates. The Board of Governors shall consult with Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives about the Board of Governors' and the Federal Open Market

Committee's objectives and plans with respect to the ranges of growth or diminution of monetary and credit aggregates for the upcoming twelve months, taking account of past and prospective developments in production, employment, and prices. Nothing in this Act shall be interpreted to require that such ranges of growth or diminution be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of changing conditions.

* * * * * * *

FEDERAL RESERVE BANKS

SEC. 4. When the organization committee shall have established Federal reserve districts as provided in section two of this Act, a certificate shall be filed with the Comptroller of the Currency showing the geographical limits of such districts and the Federal reserve city designated in each of such districts. The Comptroller of the Currency shall thereupon cause to be forwarded to each national bank located in each district, and to such other banks declared to be eligible by the organization committee which may apply therefor, an application blank in form to be approved by the organization committee, which blank shall contain a resolution to be adopted by the board of directors of each bank executing such application, authorizing a subscription to the capital stock of the Federal reserve bank organizing in that district in accordance with the provisions of this Act.

When the minimum amount of capital stock prescribed by this Act for the organization of any Federal reserve bank shall have been subscribed and allotted, the organization committee shall designate any five banks of those whose applications have been received, to execute a certificate of organization, and thereupon the banks so designated shall, under their seals, make an organization certificate which shall specifically state the name of such Federal reserve bank, the territorial extent of the district over which the operations of such Federal reserve bank are to be carried on, the city and State in which said bank is to be located, the amount of capital stock and the number of shares into which the same is divided, the name and place of doing business of each bank executing such certificate, and of all banks which have subscribed to the capital stock of such Federal reserve bank and the number of shares subscribed by each, and the fact that the certificate is made to enable those banks executing same, and all banks which have subscribed or may thereafter subscribe to the capital stock of such Federal reserve bank, to avail themselves of the advantages of this Act.

The said organization certificate shall be acknowledged before a judge of some court of record or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall file, record and carefully preserve the same in his office.

Upon the filing of such certificate with the Comptroller of the Currency as aforesaid, the said Federal reserve bank shall become a body corporate and as such, and in the name designated in such organization certificate, shall have power—

First. To adopt and use a corporate seal.

Second. To have succession after the approval of this Act until dissolved by Act of Congress or until forfeiture of franchise for violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity.

Fifth. To appoint by its board of directors a president, vice presidents, and such officers and employees as are not otherwise provided for in this Act, to define their duties, require bonds for them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. The president shall be the chief executive officer of the bank and shall be appointed by the board of directors, with the approval of the Board of Governors of the Federal Reserve System, for a term of five years; and all other executive officers and all employees of the bank shall be directly responsible to him. The first vice president of the bank shall be appointed in the same manner and for the same term as the president, and shall, in the absence or disability of the president or during a vacancy in the office of the president, serve as chief executive officer of the bank. Whenever a vacancy shall occur in the office of the president or the first vice president, it shall be filled in the manner provided for original appointments; and the person so appointed shall hold office until the expiration of the term of his predecessor.

Sixth. To prescribe by its board of directors, by-laws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act and such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this Act.

Eighth. Upon deposit with the Treasurer of the United States of any bonds of the United States in the manner provided by existing law relating to national banks, to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited, such notes to be issued under the same conditions and provisions of law as relate to the issue of circulating notes of national banks secured by bonds of the United States bearing the circulating privilege, except that the issue of such notes shall not be limited to the capital stock of such Federal reserve bank.

But no Federal reserve bank shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of the Currency to commence business under the provisions of this Act.

Every Federal reserve bank shall be conducted under the supervision and control of a board of directors.

The board of directors shall perform the duties usually appertaining to the office of directors of banking associations and all such duties as are prescribed by law.

Said board of directors shall administer the affairs of said bank fairly and impartially and without discrimination in favor of or against any member bank or banks and may, subject to the provisions of law and the orders of the Board of Governors of the Federal

Reserve System, extend to each member bank such discounts, advancements, and accommodations as may be safely and reasonably made with due regard for the claims and demands of other member banks, the maintenance of sound credit conditions, and the accommodation of commerce, industry, and agriculture. The Board of Governors of the Federal Reserve System may prescribe regulations further defining within the limitations of this Act the conditions under which discounts, advancements, and the accommodations may be extended to member banks. Each Federal reserve bank shall keep itself informed of the general character and amount of the loans and investments of its member banks with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and, in determining whether to grant or refuse advances, rediscounts or other credit accommodations, the Federal reserve bank shall give consideration to such information. The chairman of the Federal reserve bank shall report to the Board of Governors of the Federal Reserve System any such undue use of bank credit by any member bank, together with his recommendation. Whenever, in the judgment of the Board of Governors of the Federal Reserve System, any member bank is making such undue use of bank credit, the Board may, in its discretion, after reasonable notice and an opportunity for a hearing, suspend such bank from the use of the credit facilities of the Federal Reserve System and may terminate such suspension or may renew it from time to time.

Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C.

Class A shall consist of three members, *without discrimination on the basis of race, creed, color, sex, or national origin,* who shall be chosen by and be representative of the stock-holding banks.

Class B shall consist of three members, [who at the time of their election shall be actively engaged in their district in commerce, agriculture or some other industrial pursuit.] *who shall represent the public and shall be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.*

Class C shall consist of three members who shall be designated by the Board of Governors of the Federal Reserve System. *They shall be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.* When the necessary subscriptions to the capital stock have been obtained for the organization of any Federal reserve bank, the Board of Governors of the Federal Reserve System shall appoint the class C directors and shall designate one of such directors as chairman of the board to be selected. Pending the designation of such chairman, the organization committee shall exercise the powers and duties appertaining to the office of chairman in the organization of such Federal reserve bank.

* * * * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

SEC. 10. The Board of Governors of the Federal Reserve System (hereinafter referred to as the "Board") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of the Banking Act of 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive an annual salary of $15,000, payable monthly, together with actual necessary traveling expenses.

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on the date of enactment of the Banking Act of 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, one shall be designated by the President as chairman and one as vice chairman of the Board, to serve as such for a term of four years. *Except that of the persons thus appointed, beginning on February 1, 1982, and at four-year intervals thereafter, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairman of the Board for a term of four years. Whenever a vacancy shall occur, other than by expiration of term, among the Chairman or Vice Chairman of the Board of Governors of the Federal Reserve System appointed by the President as above provided, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of his predecessor.* The chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after

the date of enactment of the Banking Act of 1935 shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

SECTION 208 OF TITLE 18, UNITED STATES CODE

§ 208. Acts affecting a personal financial interest.

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, *a Federal Reserve bank director, officer, or employee*, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. *In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.*

BANK HOLDING COMPANY ACT OF 1956

* * * * * * *

DEFINITIONS

SEC. 2. (a) (1) * * *

* * * * * * *

(5) Notwithstanding any other provision of this subsection—

(A) * * *

* * * * * * *

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting

a debt previously contracted in good faith, until two years after the date of acquisition. *The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.*

* * * * * * *

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. *The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.* For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, [and shall allow thirty days within which] *in order to provide for the submission of* the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be [, may be submitted. If the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within said thirty days, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application]. *The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application.* Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board [shall by order] *shall, by order,* grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. *Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.*

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * * * *

(c) The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank [in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares] *holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of* within a period or two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

* * * * * * *

SAVING PROVISION

SEC. 11. (a) * * *

(b) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction[, and such transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board.] *If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recom-*

mendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced [within such thirty-day period] *prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated.* The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * * * *

SUPPLEMENTAL VIEWS OF RICHARD KELLY ON H.R. 9710

This joinder is subject to my disagreement with the statement in the Additional Views that "With respect to Titles II and III, we have no objection on the merits."

Section 204 of title II provides for the appointment of a Chairman that would not be guaranteed a 4-year term under all circumstances and provides that the Chairman so appointed would have to be confirmed by the Senate in his capacity as Chairman, both of which provisions tend to further dilute the independence of the Federal Reserve Board from the current pressure of politics.

RICHARD KELLY.

ADDITIONAL VIEWS OF HON. JOHN H. ROUSSELOT, HON. GEORGE HANSEN, HON. HENRY J. HYDE, HON. RICHARD KELLY, HON. MILLICENT FENWICK, HON. JAMES A. S. LEACH

Although we support H.R. 9710 in its present form, we would have preferred a simple 2-year extension of the authority to regulate interest rates on deposits and accounts in depository institutions, commonly referred to as "regulation Q," as approved unanimously by the Subcommittee on Financial Institutions. Our preference for the subcommittee version is based on three major considerations:

1. Every member of this committee, regardless of his views on the merits of extending regulation Q realizes that it is extremely unlikely that regulation Q will not be in effect 2 years hence. Even if financial reform legislation is enacted during this period, it is virtually certain to contain an extension of regulation Q for at least 2 years. In the absence of financial reform there will still be extensions of this authority which was first instituted in 1966 on a "temporary" basis and has been extended 13 times since then.

2. A 2-year extension will remove for a time the temptation either to use extension of regulation Q as a "vehicle" for passing legislation which cannot stand on its own merits or to hold meritorious legislation "hostage" to obtain an extension of regulation Q. Since most members of the committee know that regulation Q will be extended in any event, a 2-year extension would enable the committee to consider banking legislation on its merits for awhile.

3. With respect to titles II and III, we have no objection on the merits. Title II, the "Federal Reserve Reform Act," passed the House on a voice vote on September 12, 1977. Title III would give the Federal Reserve discretion to extend for up to 3 years the present 2-year limit for a bank holding company to dispose of shares acquired by a bank in satisfaction of a debt previously contracted in good faith. The remainder of title III would speed the process of arranging the acquisition of a failing bank and is noncontroversial.

We realize that a failure to enact title III would cause hardship in four situations in which banks have failed, not the least important of which happens to involve Milwaukee, Wis. Our concern is that any addition to a simple extension of regulation Q may prompt Members of the other body to propose additions of their own and thus jeopardize the extension itself.

JOHN H. ROUSSELOT.
GEORGE HANSEN.
HENRY J. HYDE.
RICHARD KELLY.
MILLICENT FENWICK.
JAMES A. S. LEACH.

114 of Title 18, Crimes and Criminal Procedure, and sections 67 and 856 of Title 31, Money and Finance, enacted provisions set out as notes under sections 27, 93, 375b, 461, 601, 635, 1451, 1693, 1728, 1730, 1751, 1752, 1795, 1817, 1832, 3201, 3301, 3401, and 3415 of this title, and sections 1601 and 1693 of Title 15, and amended provisions set out as notes under sections 461 of this title and section 1666f of Title 15] may be cited as the 'Financial Institutions Regulatory and Interest Rate Control Act of 1978'."

Short Title of 1977 Amendment. Pub.L. 95-188, Title II, § 201, Nov. 16, 1977, 91 Stat. 1387, provided that: "This title [which enacted section 225a of this title, amended sections 242 and 302 of this title and section 208 of Title 18, and enacted provisions set out as a note under section 242 of this title] may be cited as the 'Federal Reserve Reform Act of 1977'."

Savings Clause. Sections 29 and 30 of the Federal Reserve Act were renumbered 30 and 31, respectively, by Pub.L. 95-630, Title I, § 101, Nov. 10, 1978, 92 Stat. 3641.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Library References
Banks and Banking ⟨⟩353 et seq.
C.J.S. Banks and Banking § 785.

§ 241. Creation; membership; compensation and expenses

The Board of Governors of the Federal Reserve System (hereinafter referred to as the "Board") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after August 23, 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive basic compensation at the rate of $16,000 per annum, payable monthly, together with actual necessary traveling expenses. As amended Oct. 15, 1949, c. 695, § 4, 63 Stat. 880.

Library references: Banks and Banking ⟨⟩353; C.J.S. Banks and Banking § 785.

1949 Amendment. Act Oct. 15, 1949, cited to text, increased members' salaries from $15,000 to $16,000 per annum.

Effective Date of 1949 Amendment. The increased compensation provided for by Act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949.

Repeals. Act Oct. 15, 1949, c. 695, § 4, 63 Stat. 880, cited to the text, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

§ 242. Ineligibility to hold office in member banks; qualifications and terms of office of members; chairman and vice chairman; oath of office

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on August 23, 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years. The chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to

serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after August 23, 1935 shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

As amended Nov. 16, 1977, Pub.L. 95–188, Title II, § 204(a), 91 Stat. 1388.

1977 Amendment. Pub.L. 95–188 substituted in third sentence "one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years" for "one shall be designated by the President as chairman and one as vice chairman of the Board, to serve as such for a term of four years".

Effective Date of 1977 Amendment. Section 204(b) of Pub.L. 95–188 provided that: "The amendment made by subsection (a) [to the third sentence of this section] takes effect on January 1, 1979, and applies to individuals who are designated by the President on or after such date to serve as Chairman or Vice Chairman of the Board of Governors of the Federal Reserve System."

Legislative History. For legislative history and purpose of Pub.L. 95–188, see 1977 U.S.Code Cong. and Adm.News, p. 3636.

§ 244. Principal offices of Board; chairman of Board; obligations and expenses; qualifications of members; vacancies

The principal offices of the Board shall be in the District of Columbia. At meetings of the Board the chairman shall preside, and, in his absence, the vice chairman shall preside. In the absence of the chairman and the vice chairman, the Board shall elect a member to act as chairman pro tempore. The Board shall determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid, and may leave on deposit in the Federal Reserve banks the proceeds of assessments levied upon them to defray its estimated expenses and the salaries of its members and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith; and funds derived from such assessments shall not be construed to be Government funds or appropriated moneys. No member of the Board of Governors of the Federal Reserve System shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve bank or hold stock in any bank, banking institution, or trust company; and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath that he has complied with this requirement, and such certification shall be filed with the secretary of the Board. Whenever a vacancy shall occur, other than by expiration of term, among the seven members of the Board of Governors of the Federal Reserve System appointed by the President as above provided, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of his predecessor. Dec. 23, 1913, c. 6, § 10, 38 Stat. 260; June 3, 1922, c. 205, 42 Stat. 620; June 16, 1933, c. 89, § 6(b), 48 Stat. 167; Aug. 23, 1935, c. 614, § 203(a), (b), (c), 49 Stat. 704, 705.

References in Text. In the original, as amended, "this chapter, specific amendments of this chapter, and rules and regulations of the Board not inconsistent therewith" reads "this Act, specific amendments thereof, . . .", meaning the Federal Reserve Act, Act Dec. 23, 1913. For distribution of the Federal Reserve Act, see note under section 226 of this title.

Index to Notes

1. Venue

The board of governors of the Federal Reserve System, which has official residence in District of Columbia, is not an "inhabitant" of Northern District of California and therefore could not be sued in such district without its consent. Peoples Bank v. Federal Reserve Bank of San Francisco; D.C.Cal.1944, 58 F. Supp. 25, appeal dismissed 149 F.2d 850.

The fact that section 305 of this title made provision for appointment in each reserve district of a federal reserve agent, who was required to maintain local office of board of governors of Federal Reserve System on premises of reserve bank and to act as official representative of board, did not authorize maintenance of action against board in district in which board was not an inhabitant. Id.

2. Parties

In suit to enjoin enforcement of condition of membership required by board

of governors of Federal Reserve System as a prerequisite to granting plaintiff right to become member bank of Federal Reserve System, the board was an indispensable party and suit could not be maintained against federal reserve agent in absence of the board. Peoples Bank v. Federal Reserve Bank of San Francisco, D.C.Cal.1944, 58 F.Supp. 25, appeal dismissed 149 F.2d 850.

§ 247. Reports to Congress

Membership of International Banks in Federal Reserve System; Report to Congress. Pub.L. 95-369, § 3(g), Sept. 17, 1978, 92 Stat. 610, provided that: "The Board shall report to the Congress not later than 270 days after the date of enactment of this Act [Sept. 17, 1978] its recommendations with respect to permitting corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act [sections 601 to 604 and 611 to 631 of this title], to become members of Federal Reserve Banks."

Effect of International Banking Act of 1978 on International Banks; Report to Congress. Pub.L. 95-369, § 3(h), Sept. 17, 1978, 92 Stat. 610, provided that: "As part of its annual report pursuant to section 10 of the Federal Reserve Act [this section], the Board shall include its assessment of the effects of the amendments made by this Act [see Short Title note set out under section 3101 of this title] on the capitalization and activities of corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act [sections 601 to 604a or 611 to 631 of this title], and on commercial banks and the banking system."

§ 248. Enumerated powers

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

Examination of accounts and affairs of banks; publication of weekly statements; reports of liabilities and assets of depository institutions; covered institutions

(a)(1) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature, and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) Federal Home Loan Bank Board in the case of any institution insured by the Federal Savings and Loan Insurance Corporation or which is a member as defined in section 1422 of this title, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

[*See main volume for text of (b)*]

Suspending reserve requirements

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this chapter.

Public Law 95-188
95th Congress

An Act

To extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, to promote the accountability of the Federal Reserve System, and for other purposes.

Nov. 16, 1977
[H.R. 9710]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Depository institutions. Interest rate controls, extension.

TITLE I—REGULATION OF INTEREST RATES

SEC. 101. Section 7 of the Act of September 21, 1966 (Public Law 89-597), is amended by striking out "December 15, 1977" and inserting in lieu thereof "December 15, 1978".

12 USC 461 note.

TITLE II—AMENDMENTS TO THE FEDERAL RESERVE ACT

Federal Reserve Reform Act of 1977.

SEC. 201. This title may be cited as the "Federal Reserve Reform Act of 1977".

12 USC 226 note.

CONGRESSIONAL-FEDERAL RESERVE DIALOG ON MONETARY POLICY

SEC. 202. Insert a new section 2A immediately after section 2 of the Federal Reserve Act to read as follows:

"GENERAL POLICY: CONGRESSIONAL REVIEW

"SEC. 2A. The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates. The Board of Governors shall consult with Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives about the Board of Governors' and the Federal Open Market Committee's objectives and plans with respect to the ranges of growth or diminution of monetary and credit aggregates for the upcoming twelve months, taking account of past and prospective developments in production, employment, and prices. Nothing in this Act shall be interpreted to require that such ranges of growth or diminution be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of changing conditions.".

12 USC 225a.

Semiannual hearings before congressional committees.

BOARD OF DIRECTORS OF FEDERAL RESERVE BANKS

SEC. 202. The following paragraphs of section 4 of the Federal Reserve Act are amended:

(a) the tenth paragraph by inserting after the comma the following: "without discrimination on the basis of race, creed, color, sex, or national origin,".

12 USC 301 and note.
12 USC 302.

12 USC 302.

(b) the eleventh paragraph by striking all after "members," and substituting "who shall represent the public and shall be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.".

12 USC 302.

(c) the twelfth paragraph by inserting immediately after the first sentence thereof the following sentence: "They shall be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.".

SENATE CONFIRMATION OF CHAIRMAN AND VICE CHAIRMAN OF BOARD OF GOVERNORS

SEC. 204. (a) The third sentence of the second paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) is amended to read as follows: "Of the persons thus appointed, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years.".

Effective date.
12 USC 242 note.

(b) The amendment made by subsection (a) takes effect on January 1, 1979, and applies to individuals who are designated by the President on or after such date to serve as Chairman or Vice Chairman of the Board of Governors of the Federal Reserve System.

CONFLICTS OF INTEREST

SEC. 205. (a) Subsection 208(a) of title 18, United States Code, is amended by adding "a Federal Reserve bank director, officer, or employee," immediately before "or of the District of Columbia".

(b) Subsection 208(b) of title 18, United States Code, is amended by adding the following new sentence at the end thereof: "In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.".

REFERENCES TO FEDERAL RESERVE ACT PARAGRAPHS

12 USC 226.

SEC. 206. References in this title to paragraphs of the Federal Reserve Act refer to the paragraphs as designated in the compilation of the Federal Reserve Act as amended through 1974, compiled under the direction of the Board of Governors of the Federal Reserve System in its legal division.

TITLE III—AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956

Acquired shares, disposition, time extension.

SEC. 301. (a) Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) is amended by inserting after the second sentence the following new sentence: "The Board is authorized upon application by a bank to extend, from time to time for not more than

one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.".

(b) Section 2(a)(5)(D) of such Act (12 U.S.C. 1841(a)(5)(D)) is amended by adding at the end thereof the following new sentence: "The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.".

(c) Section 4(c)(2) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(2)), is amended by striking out "shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years" and inserting in lieu thereof the following: "shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years".

Bank shares or assets, applications for acquisition. Notice to Comptroller of the Currency or State supervisory authority. Views and recommendations.

SEC. 302. Section 3(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended to read as follows:

"(b) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on

Disapproval.

Hearings.

Applications, nonaction deemed approval.

the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditions action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.".

Acquisitions, mergers, and consolidations. Notification to Attorney General. 12 USC 1842.

SEC. 303. Section 11(b) of the Bank Holding Company Act of 1966 (12 U.S.C. 1849) is amended to read as follows:

"(b) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is

Antitrust actions.

Judicial standards.

commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.".

Approved November 16, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-774 (Comm. on Banking, Finance and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 123 (1977):
Oct. 31, considered and passed House.
Nov. 1, considered and passed Senate, amended.
Nov. 2, House concurred in Senate amendment.

29-194 O - 80 - 90

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : TERM: 14 years : (HOLDOVERS) 17
: MEMBERS: SEVEN :

NAME	State District	Term Expires	Nominated	Confirmed	Commissioned	Vice
MARTIN, Preston ( )	Region 12 Calif.	1/31/96	3/17/82	3/30/82	3/30/82	FHSchultz, tm exp
(for a term of fourteen years from 2/1/82)						
(FHSchultz rsgnd. 2/11/82, no eff. date; acc. 3/25/82, eff. 2/11/82)						

U.S. GOVERNMENT PRINTING OFFICE : 1980—O-334-630

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : TERM: 14 years : (HOLDOVERS)
: MEMBERS: SEVEN :

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
(AFBurns rsgnd. 1/12/78, acc. 1/13/78, no eff. date.)	eff. 3/31/78 "or any earlier convenient time;"					
(OATH: 3/8/78) MILLER, G. William (D) (for a term of fourteen years from 2/1/78)	Dist. 12 Calif.	1/31/92	1/25/78	3/3/78	3/8/78	DMLilly, term expiring
TEETERS, Nancy Hays (D) (for the unexpired term of fourteen years from 2/1/70) (PCJackson,Jr. rsgnd. 10/18/78, eff. 11/17/78; acc. 11/20/78, eff. 11/17/78.) (SSGardner, died 11/19/78)	Dist. 7 Indiana	1/31/84	8/28/78	9/15/78	9/17/78	AFBurns, rsgnd.
RICE, Emmett John (D) (for the unexpired term of fourteen years from 2/1/76)	Dist. 2 N.Y.	1/31/90	5/16/79	6/12/79	6/13/79	SSGardner, deceased
SCHULTZ, Frederick H. (D) (for the unexpired term of fourteen years from 2/1/68)	Dist. 6 Fla.	1/31/82	6/14/79	7/18/79	7/19/79	PCJackson,Jr., rsgnd.
(GWMiller nominated 7/20/79 to be Secretary of the Treasury; appointed: 8/6/79.)						

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : TERM: 14 years : (HOLDOVERS)
: MEMBERS: SEVEN :

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
(Oath - 8/6/79) VOLCKER, Paul A. (D) (for the unexpired term of fourteen years from 2/1/78)	Dist. 3 N.J.	1/31/92	7/27/79	8/2/79	8/6/79	GWMiller
(GWMiller rsgnd. 8/6/79, eff. upon taking office as Secretary of the Treasury; acc. 8/14/79, eff. 8/6/79.) (PEColdwell rsgnd. 2/8/80, eff. 2/29/80; acc. 2/26/80, eff. 2/29/80)						
GRAMLEY, Lyle Elden (D) (for a term of fourteen years from 2/1/80)	Dist. 10 Kansas	1/31/94	3/18/80	WITHDRAWN-3/21/80		PEColdwell, tm. exp.
GRAMLEY, Lyle Elden (D) (for a term of fourteen years from 2/1/80)	Dist. 8 Mo.	1/31/94	3/21/80	5/15/80	5/16/80	PEColdwell, tm. exp.

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : TERM: 14 years : MEMBERS: 7 : HOLDOVER

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
WALLICH, Henry C. (R)	Dist. 1 Conn.	1/31/88	1/22/74	2/8/74	2/22/74	JDDaane, tm. expng.
(AFBrimmer rsgd. 5/14/74, eff. 8/31/74; acc. 6/3/74, eff. 8/31/74.)						

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : Term: 14 years : MEMBERS: 7 : HOLDOVER

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
COLDWELL, Philip Edward (D)	Dist. 11 Texas	1/31/80	9/26/74	10/9/74	10/18/74	AFBrimmer, rsgd.
(for the unexpired term of fourteen years from 2/1/66.) (JESheehan rsgd. 4/15/75, eff. 6/1/75; acc. 4/22/75, eff. 6/1/75.)						
JACKSON, Philip C., Jr. (D)	Dist. 6 Alab.	1/31/82	5/22/75	6/25/75	6/26/75	JESheehan, rsgd.
(for the unexpired term of fourteen years from 2/1/68) (JMBucher rsgd. 10/28/75, eff. COB 1/2/76 or such earlier date as may suite your convenience; acc. 11/24/75, eff. 1/2/76.)						
PARTEE, J. Charles (I)	Dist. 5 Va.	1/31/86	12/8/75	12/19/75	12/22/75	JMBucher, rsgd.
GARDNER, Stephen S. (R)	Dist. 3 Penna.	1/31/90	1/20/76	1/29/76	1/29/76	GWMitchell, tm. exp ing
(for a term of fourteen years from 2/1/76) (RCHolland rsgd. 3/17/76, eff. 5/15/76; acc. 4/15/76, eff. 5/15/76.)						
LILLY, David M. (R)	Dist. 9 Minn.	1/31/78	4/26/76	5/28/76	6/1/76	RCHolland, rsgd.
(for the unexpired term of fourteen years from 2/1/64)						

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : Members: 7 : Term: 14 yrs. : HOLDOVER

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
ROBERTSON, James Louis (R)	(Dist. 10) Nebr.	1/31/78	3/10/64	3/12/64	3/17/64	Reappointment
(ALMills, Jr., rsgd. 1/4/65, eff. 3/1/65; accepted 3/1/65, no eff. date - apparently accepted as requested)						
MAISEL, Sherman J. (D)	(Dist. 12) Calif.	1/31/72	4/1/65	4/22/65	4/22/65	ALMills, rsgd.
(unexpired term of 14 yrs. from 2/1/58)						
BRIMMER, Andrew F. (D)	Oath: 3/9/66 (3) Penna.	1/31/80	2/28/66	3/4/66	3/4/66	CCBalderston
(CCBalderston, rsgd 3/1/66, accepted 3/1/66, eff. 2/28/66)						
(CNShepardson, rsgd 3/31/67, eff. 4/30/67; accepted 4/10/67, eff. 4/30/67)						
SHERRILL, William W. (D)	(Dist. 11) Tex.	1/31/68	4/24/67	4/26/67	4/27/67	CNShepardson, rsgd.
SHERRILL, William W. (D)	(Dist. 11) Tex.	1/31/82	1/18/68	1/23/68	1/24/68	Reappointment

U.S. GOVERNMENT PRINTING OFFICE 714-157-h

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : Members: 7 : Term: 14 years : HOLDOVER

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
(Oath: 1/31/70) BURNS, Arthur F. (R)	(Dist.2) N.Y.	1/31/84	10/22/69	12/18/69	1/20/70	tm. expng. WMcCMartin, Jr.
(WWSherrill rsgd 11/15/71, no eff. date mentioned; acc. 12/10/71, eff. 11/15/71.)						
(Oath:1/13/72) SHEEHAN, John Eugene (R)	(Dist.8) Ky.	1/31/82	RECESS	-----	12/23/71	WWSherrill, rsgd.
(for the unexpired term of fourteen years from 2/1/68)						
SHEEHAN, John Eugene (R)	(Dist.8) Ky.	1/31/82	1/24/72	2/7/72	2/7/72	Recess
(for the unexpired term of fourteen years from 2/1/68)						
BUCHER, Jeffrey M. (R)	(Dist.12) Calif.	1/31/86	4/27/72	5/31/72	6/2/72	SJMaisel, tm.exp.
(for a term of 14 yrs from 2/1/72)						
(SJMaisel rsgd 5/31/72, eff. cob 5/31/72 (Ltr was submitted upon the confirmation of his successor by the Senate on 5/31/72; ack'd 6/8/72, expressing appreciation for his service to the nation.)						
(JLRobertson rsgd 3/29/73, eff. cob 4/30/73, or any earlier date that might better suit Pres' convenience; acc. 4/25/73, eff. 4/30/73.)						
HOLLAND, Robert C. (R)	Dist. 10 Nebra.	1/31/78	5/16/73	6/1/73	6/11/73	JLRobertson, rsgd

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM — Members: 7 — Term: 14 years

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
(Dist. No. 6)						
KING, George Harold, Jr. (R)	Miss.	1/31/74	1/18/60	2/8/60	2/8/60	Reappointment
(M. S. Szymczak resigned, 4/21/61, effective 6/1/61; accepted, 5/27/61, effective as of 6/1/61)						
See record 10						

U. S. GOVERNMENT PRINTING OFFICE 235323

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM — Members: 7 — Term: 14 years

(DISTS) NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
(Dist. No. 7)						
MITCHELL, George W. (D)	Illinois	1/31/62	8/10/61	8/17/61	8/18/61	MSSzymczak, rsgd
(7) (Remainder tm of 14 yrs fm 2/1/48)						
MITCHELL, George W. (D)	Ill.	1/31/76	1/16/62	1/29/62	1/30/62	Reappointment
(Tm of 14 yrs fm 2/1/62) (GHKing rsgd, 9/12/63; accepted, 9/18/63, eff. apparently date of President's letter)						
(5)						
DAANE, J. Dewey	Va.	1/31/74	10/31/63	11/8/63	11/14/63	GHKing, Jr.
(for remainder of tm of 14 yrs fm 2/1/60)						

U.S. GOVERNMENT PRINTING OFFICE 563986-h

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : Members: 7 : Term: 14 years : Salary: ~~$15,000~~

DISTS. NAME	State	Tm. Expires	Nominated	Confirmed	Commissioned	Vice
✓MILLS, Abbot L., Jr. (12)	Oregon	. . .	1/23/52	2/6/52	2/7/52	MSEccles, rsgd.
(Unexpired term of 14 years from February 1, 1944)						
(10) ✓(R) ROBERTSON, James Louis (10)	Nebraska	1/31/64	1/23/52	2/6/52	2/7/52	ELNorton, rsgd.
(Unexpired term of 14 years from February 1, 1950)						
(Oliver S. Powell resigned 6/26/52, effective midnight 6/30/52; accepted 6/30/52 as tendered.)						

See Record 8.

U. S. GOVERNMENT PRINTING OFFICE 732872

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : Members: 7 : Term: 14 yrs. : ~~Salary: $15,000 Over~~

DISTS. NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
✓MILLER, Paul Emmert Dist. No.9	Minn.	1/31/68	7/26/54	8/3/54	8/3/54	RMEvans, term exp.
(Remainder of term of 14 yrs. from February 1, 1954)						
(3) ✓BALDERSTON, C. Canby (R)	Pa.	1/31/66	8/2/54	8/6/54	8/6/54	OSPowell, rsgd.
(Remainder of term of 14 yrs. from February 1, 1952) -District 3						
(11) (Paul Emmert Miller deceased October 21, 1954)						
✓SHEPARDSON, Charles Noah (R)	Texas	1/31/68	2/18/55	3/8/55	3/9/55	PEMiller, dec'd
(2) (District No. 11)						
✓MARTIN, William McChesney, Jr. (D)	N.Y.	1/31/70	1/9/56	1/30/56	1/30/56	Reappointment
(12) (14 yrs. from 2/1/56)						
✓MILLS, Abbot L., Jr. (R)	Oregon	1/31/72	2/5/58	2/17/58	2/17/58	Reappt.
(14 years from 2/1/58)						
(J. K. Vardaman resigned in ltr dated 10/1/58. The President accepted in ltr dated 10/7/58 to be effective 12/1/58)						
✓KING, George Harold, Jr. (R) (Dist. No. 6)	Miss.	1/31/60	3/5/59	3/12/59	3/12/59	JKVardaman, Jr., resgd.
(Remainder of term of 14 yrs. from February 1, 1946)						

U. S. GOVERNMENT PRINTING OFFICE 235323

See Record 9.

Pub 305 - Aug 23, 1935.
Members: 7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. Term 14 years. Salary ~~$15,000~~

NAME	State	Recess appointment	Nominated	Confirmed	Commissioned	Vice
✓Eccles, Marriner S. (12)	Utah		2/1/40	2/9/40	2/16/40 sgd 3/2	Reappt ~~Davis, resgd~~
Unexpired term of 8 years from February 1, 1936.						
✓Davis, Chester C. (5)	Md		2/1/40	2/9/40	2/16/40 sgd 3/2	Eccles, term ex.
Term of 14 years from February 1, 1940.						
(Eccles did not desire reappointment for a full term of 14 years; Davis resigned, Eccles was nominated for unexpired term of Davis, and Davis was then nominated for the full term vice Eccles)						
Davis resigned 4/11/41, effective 4/15/41. Accepted 4/12/41.						
✓Ransom, Ronald (6) Decd.	Ga.		1/7/42	1/15/42	1/16/42	Reappt
For a term of fourteen years from Feb. 1, 1942						
✓Evans, R. M. (5) 14 years from 2-1-40	Va.		2/17/42	3/9/42	3/10/42	Davis
2/20/43 SEC. OF STATE SUGGESTED A LEAVE OF ABSENCE FOR MR. SZYMCZAK SO HE COULD SERVE AS SUB*AREA DIRECTOR FOR YUGOSLAVIA. SEE STATE.						
8/9/43 CH OK FDR						
✓ECCLES, Marriner S. ..(12)...	Utah	.....	1/12/44	1/20/44	1/21/44	Reappt.
Term of fourteen years from February 1, 1944.						
John K. McKee RESIGNED 11/6/45-ACCPTD 1/21/46.						

See Card 6

U. S. GOVERNMENT PRINTING OFFICE 129218

Members: 7
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM Term: 14 yrs.
Public 305 - August 23, 1935. Salary: ~~$15,000~~

NAME	State	Recess appointment	Nominated	Confirmed	Commissioned	Vice
✓VARDAMAN, James Kimble, Jr. (8)	Missouri		1/21/46	4/3/46	4/3/46	John McKee
(Term of fourteen years from February 1, 1946., vice John McKee.)						
✓CLAYTON, Lawrence (1)	Mass.		2/3/47	2/10/47	2/11/47	Ralph W. Morrison
(Term of fourteen years from February 1, 1938)						
Ronald Ransom DECEASED.						
✓SZYMCZAK, M. S. (7)	Illinois	.....	1/26/48	2/20/48	2/21/48	Reappt.
(For term of fourteen years from February 1, 1948)						
✓McCABE, Thomas Bayard over (3)	Pa.	.....	1/26/48	4/12/48	4/13/48	Ronald Ransom
(For unexpired term of fourteen years from February 1, 1942) ..... RRansom DECEASED						
(Lawrence Clayton deceased 12/4/49) (TBMcCabe resigned 3/9/51, eff'e 3/31;accepted 3/15/5						
✓NORTON, Edward Lee (6)	Alabama	. . .	5/26/50	6/2/50	8/23/50	EGDraper
(Term of 14 years from February 1, 1950)						
✓POWELL, Oliver S. (9)	Minn.	. . .	7/12/50	8/9/50	8/23/50	LClayton,dec'd.
(Unexpired term of 14 years from February 1, 1938)						
✓MARTIN, William McChesney,Jr. N.Y.(2)		. . .	3/19/51	3/21/51	3/22/51	TMcCabe,rsgd.
(Unexpired term of fourteen years from February 1, 1942)						
(Marriner S. Eccles resigned effective July 14, 1951)						
(Edward Lee Norton resigned 1/21/52, effective February 1, 1952; accepted January 22, 1952, effective February 1, 1952.)						

See Record 7.

U. S. GOVERNMENT PRINTING OFFICE 129218

Term 12 years - Act June 16, 1933. Pub 66

FEDERAL RESERVE BOARD

Name.	State.	Recess Appointment.	Nominated.	Confirmed.	Commissioned.	Vice.
James, George R. (8)	Tenn	4/15/31	12/10/31	12/18/31	12/18/31	Com sgd 12/28/31 Reappt.
Term of ten years from April 28, 1931 (8th Fed. Reserve Dist)						
Magee, Wayland W. (10)	Nebr.	5/5/31	12/10/31	12/18/31	12/18/31	Com sgd 12/28/31 Cunningham, Decd.
Term of ten years from January 25, 1923 (10th Fed. Reserve Dist)						
Magee, Wayland W. (R) 10th	Neb		1/9/33	NOT CONFIRMED		Reappt.
Term of ten years from January 25, 1933. MEYER tendered his resignation March 24, 1933, effective as soon as convenient. April 4, 1933. President requested him to hold on for a time.						
~~Black, Eugene R.~~ (6)	Ga		~~5/10/33~~	~~5/15/33~~	~~5/18/33~~	~~Meyer. Com sgd 5/18/33~~
Unexpired term of 10 years from August 10, 1928.						
~~Szymczak, M. S.~~ (7)	Ill		~~6/3/33~~	~~6/10/33~~	~~6/13/33~~	~~Young, resgd~~ Com sgd 6/13/33
Term of 10 years from April 19, 1933.						
~~Thomas, J.J.~~ (10)	Nebr		~~6/3/33~~	~~6/10/33~~	~~6/13/33~~	~~Magee Com sgd 6/13/33~~
Term of 10 years from January 25, 1933						
Miller, Adolph C. (5) (D)	D.C.	8/21/34	1/10/35	1/23/35	1/26/35 sgd 1/28	Reappt. com sgd 8/21/34
Term of 12 years from August 10, 1934.						
BLACK resigned June 14,1934, accepted August 15, 1934, effective at once.						
Eccles, Marriner S.	Utah	11/10/34	1/10/35	4/24/35	4/25/35 sgd 4/25	Balance of term of Black
Unexpired term of 10 years from August 10, 1928.						

Pub 305 - Aug 23, 1935. 7 members.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. Banking Act of 1935. Term 14 years

Name.	State.	Recess Appointment.	Nominated.	Confirmed.	Commissioned.	Vice.
Morrison, Ralph W. (11)	Texas		1/27/36	1/30/36	1/31/36	Thomas
Term of 2 years from February 1, 1936.						
Eccles, Marriner S. (12)	Utah		1/27/36	1/30/36	1/31/36	Reappointment
Term of 4 years from February 1, 1936.						
Ransom, Ronald (6)	Ga		1/27/36	1/30/36	1/31/36	James
Term of 6 years from February 1, 1936.						
Davis, Chester C. (5)	Md		6/5/36	6/16/36	6/20/36 sgd 6/20	
Term of 8 years from February 1, 1936.						
McKee, John (4)	Ohio		1/27/36	1/30/36	1/31/36	Hamlin
Term of 10 years from February 1, 1936						
Szymczak, M. S. (7)	Ill		1/27/36	1/30/36	1/31/36	Reappointment
Term of 12 years from February 1, 1936						
Broderick, Joseph A. (2)	N. Y.		1/27/36	1/30/36	1/31/36	Miller
Term of 14 years from February 1, 1936.						
MORRISON resigned March 24, 1936. Accepted July 9, 1936.						
BRODERICK resigned ?			Accepted September 30, 1937.			
Draper, Ernest G. (2)	Conn		3/11/38	3/24/38	3/26/38	Broderick
Term of 14 years from February 1, 1936						
Davis resigned 1/31/40. Accepted 1/31/40. See next card.						

FEDERAL RESERVE BOARD:

Name.	State.	Recess Appointment.	Nominated.	Confirmed.	Commissioned.	Vice.
Hamlin, Charles S.,	Mass.		6/15/14	7/6/14	8/8/14	2 Year term
Warburg, Paul M.,	N.Y.		6/15/14	8/7/14	8/8/14	4 Year term
Jones, Thomas D.,	Ill.		6/15/14	WITHDRAWN-7/23/14		6 Year term
Harding, W.P.G.,	Ala.		6/15/14	7/6/14	8/8/14	8 Year term
Miller, A. C.,	Cali.,		6/15/14	7/6/14	8/8/14	10 Year term
Delano, Frederic A.,(Chicago)	Ill.		8/4/14	8/7/14	8/8/14	v Jones 6 Year term
Hamlin, Charles S.,	Mass.		7/26/16	8/3/16	8/10/16	Reappointment 10 Year term
Strauss, Albert	N.Y.		9/19/18	Com.Sgd.10/28/18 10/24/18	10/24/18	V. Warburg 10 year term
Moehlenpah, Henry A.,Clinton,Wisc.			9/2/19	9/23/19	9/23/19	Delano,resigned 6 year term
Commission signed Nov.8,1919.						
Platt, Edmund,Poughkeepsie,	N.Y?		5/7/20	5/28/20	5/28/20	Strauss,resigned Com.Sgd.6/4/20
For term of 10 years from Oct. 24,1918)			(From 2nd Fed.Res.Dist)			
Wills, D.C.(Cleveland)	Ohio	9/22/20	12/7/20	Not confirmed		Mohlenpah,Term Ex
(New Commission,dated Sept.21,1920,			signed and sent to State Nov.29,1920			

Terms have expired

FEDERAL RESERVE BOARD:

Term ten years
Salary,$12,000, per annum

Name.	State.	Recess Appointment.	Nominated.	Confirmed.	Commissioned.	Vice.
Mitchell, John R.,(St.Paul)	Minn.		4/27/21	4/29/21	4/29/21	Mohlenpah, 8/8/20
Crissinger, D.R., (Marion,	Ohio)		1/12/23	3/2/23	4/19/23	Harding,---8/8/22
Campbell, Milo D., (Michigan			1/12/23	1/25/23	1/25/23	New Office,Act of June 3,1922
For a term of ten years--Commission signed and sent to Fed.Res.Bd. March 13,1923						
James. George R. (Memphis)	Tenn.	5/14/23	12/10/23	1/22/24	1/22/24	Mitchell,Resgd
For unex.term of 10 years from April 28, 1921				(From 8th Fed.Res.Dist)		ed
Cunningham,Edward H.,	Iowa	5/14/23	12/10/23	1/22/24	1/22/24	Campbell,deceas
For unexired term of 10 years from Jan.25/23 (From 7th Fed.Res.Dist.)						
Miller, A. C. (1) (2)	Calif		5/17/24	5/23/24	5/24/24	Reappt.
Term of ten years (From 12th Fed.Res.Dist.)						
Hamlin, Charles S. (1)	Mass		7/1/26	7/3/26	7/3/26	Reappt.
Term of 10 years from August 10, 1926.				(From 1st Fed.Res.Dist)		
Young, Roy A.,	Minn.	9/21/27	12/6/27	2/2/28	2/2/28	Crissinger,Resgd
(For unexpired term of ten years from April 19,1923)				(From 9th Fed.Res.Dist)		
Platt, Edmund	N.Y.		5/14/28	5/22/28	5/22/28	Reappt.
(Term of ten years from August 10, 1928)						
YOUNG resigned August 27, 1930, effective September 1st.						
PLATT resigned September 11, effective September 15, 1930.						
Meyer, Eugene (1) (2)	N.Y.	9/15/30	12/3/30	2/25/31	2/25/31	Platt Com sgd 3/2/31
# Cunningham,deceased,November 28,1930						

Terms have expired

VICE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : INDEPENDENT : TERM: 4 years SALARY: Level III 9

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
SCHULTZ, Frederick H. (D)	Fla.	7/18/83	6/14/79	7/18/79	7/19/79	New Position
(FHSchultz rsgnd. 2/11/82, eff. 2/11/82; acc. 3/25/82, eff. 2/11/82)						

NOTE: Effective January 1, 1979, the Chairman and Vice Chairman shall be designated by the President, by and with the advice and consent of the Senate, for terms of four years.

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

VICE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : INDEPENDENT : TERM: 4 years SALARY: Level III 10

NAME	State	Term Expires	Nominated	Confirmed	~~Commissioned~~ By ORDER:	Vice
MARTIN, Preston ( )	Calif.	3/29/86	3/17/82	3/30/82	3/30/82	FHSchultz, tm. expiring

U.S. GOVERNMENT PRINTING OFFICE : 1980—O-334-630

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Department	Subject
INDEPENDENT	VICE CHAIRMAN

5

MITCHELL, George W. -- ORDER -- 5/17/73

By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate George W. Mitchell as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from May 1, 1973, unless and until his services as a member of said Board shall have sooner terminated.

RICHARD NIXON

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Department	Subject
INDEPENDENT	VICE CHAIRMAN

8

GARDNER, Stephen S. - ORDER - 2/1/76 - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate Stephen S. Gardner as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from February 1, 1976, unless and until his services as a member of said Board shall have sooner terminated.

GERALD R. FORD

(SSGardner, died 11/19/78)

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject
	INDEPENDENT	VICE CHAIRMAN

ROBERTSON, James Louis - 3/2/66 --

ORDER - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate James Louis Robertson as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from March 1, 1966, unless and until his services as a member of said Board shall have sooner terminated.

LYNDON B. JOHNSON

U.S. GOVERNMENT PRINTING OFFICE 766-774-h

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject
	INDEPENDENT	VICE CHAIRMAN

ROBERTSON, James Louis - ORDER - 2/27/70

By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate James Louis Robertson as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from March 1, 1970, unless and until his services as a member of said Board shall have sooner terminated.

RICHARD NIXON

(JLRobertson rsgd 3/29/73, eff. cob 4/30/73, or any earlier date that might better suit Pres' convenience; acc. 4/25/73, eff. 4/30/73.)

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject	3
	Independent	VICE CHAIRMAN	

✓BALDERSTON, C. Canby, ORDER of designation dated March 11, 1955. (Over)

✓BALDERSTON, C. Canby, designated by Order, dated March 12, 1959.
OVER - for Language of ORDER.

SEE RECORD 4

U. S. GOVERNMENT PRINTING OFFICE 235323

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject	4
	Independent	VICE CHAIRMAN	

✓BALDERSTON, C. Canby - 2/8/63 - (Term Expires: March 11, 1967)

ORDER - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate C. Canby Balderston as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from March 12, 1963, unless and until his services as a member of said Board shall have sooner terminated.

JOHN F. KENNEDY

U.S. GOVERNMENT PRINTING OFFICE 602913-b

Department	Subject
VICE CHAIRMAN - BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.	VICE CHAIRMAN

"Executive Order. By virtue of and pursuant to the authority vested in me by section 10 of the Federal Reserve Act (38 Stat. 260) as amended by section 203 (a) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate Ronald Ransom as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years. FRANKLIN D. ROOSEVELT. August 6, 1936."

"Executive Order. Designating the Vice Chairman of the Board of Governors of the Federal Reserve System. By virtue of and pursuant to the authority vested in me by section 10 of the Federal Reserve Act (38 Stat. 260) as amended by section 203 (b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate Ronald Ransom as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from August 6, 1940, unless and until his services as a member of said Board shall have sooner terminated. FRANKLIN D. ROOSEVELT. July 18, 1940."

EXECUTIVE ORDER

Designating the Vice Chairman of the Board of Governors of the Federal Reserve System

By virtue of and pursuant to the authority vested in me by section 10 of the Federal Reserve Act (38 Stat. 260) as amended by section 203(b) of the act of August 23, 1935 (49 Stat. 704), I hereby designate Ronald Ransom as Vice Chairman of the Board of Governors of the Federal Reserve System, to serve for a term of four years from August 6, 1944, unless and until his services as a member of said Board shall have sooner terminated.

Franklin D. Roosevelt.

THE WHITE HOUSE,
January 31, 1945.

(Ronald Ransom deceased)

SEE CARD 2

U.S. GOVERNMENT PRINTING OFFICE 145344

Department	Subject
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	VICE CHAIRMAN (over)

ECCLES, Marriner - The President wrote Mr. Eccles on 1/27/48 stating that he desired to appoint someone else as Chairman of the Board of Governors and asked Mr. Eccles to remain as Vice-Chairman. Mr. Eccles in a letter to the President on the same date accepted. HOWEVER, NO ORDER WAS EVER ISSUED.

(Marriner Eccles resigned as a member of the Board of Governors effective July 14, 1951)

See Record 3

U. S. GOVERNMENT PRINTING OFFICE 718282

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS OF THE	Department	Subject
	INDEPENDENT	CHAIRMAN

MILLER, G. William - ORDER - 3/8/78 -

(Term as Member expires 1/31/92)

By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate G. William Miller, as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from March 8, 1978, unless and until his services as a member of said Board shall have sooner terminated.

JIMMY CARTER

(GWMiller rsgnd. 8/6/79, eff. upon taking office as Secretary of the Treasury; acc. 8/14/79, eff. 8/6/79.)

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM : INDEPENDENT : TERM: 4 years SALARY: Level II

NAME	State	Term Expires	Nominated	Confirmed	Commissioned	Vice
VOLCKER, Paul A. (D) (Oath - 8/6/79)	N.J.	8/5/83	7/27/79	8/2/79	8/6/79	New Position

NOTE: Effective January 1, 1979, the Chairman and Vice Chairman shall be designated by the President, by and with the advice and consent of the Senate, for terms of four years.

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject
	INDEPENDENT	ACTING CHAIRMAN

BURNS, Arthur F. - ORDER - 2/2/78 - I hereby designate Arthur F. Burns to serve as Acting Chairman of the Board of Governors of the Federal Reserve System until such time as his successor as Chairman is designated, or until his resignation as a member of the Board of Governors, already received and accepted, becomes effective, whichever first occurs.

JIMMY CARTER

U.S. GOVERNMENT PRINTING OFFICE 16—80238-1

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS OF THE

Department	Subject
INDEPENDENT	CHAIRMAN

MARTIN, William McChesney, Jr. - ORDER - 3/30/67 - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate William McChesney Martin, Jr., as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from April 1, 1967, unless and until his services as a member of said Board shall have sooner terminated.

(His term as Mbr. ends 1/31/70)

LYNDON B. JOHNSON

(Succeeded by Arthur F. Burns eff 2/1/70) - See: Card #6

U.S. GOVERNMENT PRINTING OFFICE 766-774-h

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS OF THE

Department	Subject
INDEPENDENT	CHAIRMAN

BURNS, Arthur F. - ORDER - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate Arthur F. Burns, as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from February 1, 1970, unless and until his services as a member of said Board shall have sooner terminated.

(Term as Member expires 1/31/84)

/s/ RICHARD NIXON

THE WHITE HOUSE,

January 31, 1970.

BURNS, Arthur F. - ORDER - 1/28/74 - Same language as above with the exception that the term of four years will be from February 1, 1974.

U.S. GOVERNMENT PRINTING OFFICE 16—80236-1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject	3
	Independent	CHAIRMAN Term: 4 years	

✓ MARTIN, William McChesney, Jr., designated by Order, dated March 11, 1955. (Over)

✓ MARTIN, William McChesney, Jr., designated by Order, dated February 1, 1956. (Reappointment) (Language of Order - Over) (Term expires 3/31/59)

✓ MARTIN, William McChesney, Jr., designated by Order, dated March 12, 1959. OVER - for Language of ORDER. ..to serve for a term of four years from April 1, 1959.. (Expires: 3/31/63)

SEE RECORD 4

U.S. GOVERNMENT PRINTING OFFICE 235323

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	Department	Subject	4
	Independent	CHAIRMAN	

✓ MARTIN, William McChesney, Jr. - 2/8/63 - (Term Expires: March 31, 1967)

ORDER - By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act (38 Stat. 260), as amended by Section 203(b) of the Act of August 23, 1935 (49 Stat. 704), I hereby designate William McChesney Martin, Jr., as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years from April 1, 1963, unless and until his services as a member of said Board shall have sooner terminated.

JOHN F. KENNEDY

SEE: CARD #5

U.S. GOVERNMENT PRINTING OFFICE 602913-h

Department	Subject	1
CHAIRMAN - BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.	CHAIRMAN	

"Executive Order. Designating the Chairman of the Board of the Federal Reserve System. By virtue of and pursuant to the authority vested in me by Section 10 of the Federal Reserve Act, (38 Stat. 260), as amended by Section 203 (a) of the Act of August 23, 1935, (49 Stat. 704), I hereby designate Marriner S. Eccles as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years. FRANKLIN D. ROOSEVELT. February 3, 1936."

EXECUTIVE ORDER. Designating the Chairman of the Board of Governors of the Federal Reserve System. By virtue of and pursuant to the authority vested in me by section 10 of the Federal Reserve Act (38 Stat. 260), as amended by section 203(a) of the Act of August 23, 1935 (49 Stat.704), I hereby designate Marriner S. Eccles as Chairman of the Board of Governors of the Federal Reserve System, to serve as such for a term of four years, effective February 1, 1940. FRANKLIN D. ROOSEVELT. March 5, 1940.

Marriner S. Eccles appointed by Executive Order No. 9421 of Feb. 8, 1944 for a term of four years from 2/1/44.

SEE CARD 2

U.S. GOVERNMENT PRINTING OFFICE: 1938 110288

Department	Subject	2
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM	CHAIRMAN	

✓McCABE, Thomas Bayard, designated by Order, dated April 15 , 1948. Over

(Mr. McCabe resigned 3/9/51, effective 3/31/51; accepted 3/15/51, effective at the close of business 3/31/51)

✓MARTIN, William McChesney, Jr.,designated by Order, to serve a term of four years. Order dated: April 2, 1951

SEE RECORD 3

U. S. GOVERNMENT PRINTING OFFICE 718282

THE WHITE HOUSE

WASHINGTON

April 11, 1983

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING Orig. signed by FFF

SUBJECT: Holdover Status of Federal Reserve Board Chairman

INTRODUCTION:

You have inquired of this office concerning the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242. Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

CONCLUSION:

In our opinion and that of the Department of Justice, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to case law, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

DISCUSSION:

In an opinion dated January 31, 1978, the Office of Legal Counsel of the Department of Justice considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. That opinion concluded that the statutory holdover provision applicable to members of the Board did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the

Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244, but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This was in fact done by President Carter on February 2, 1978, when he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of a successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that Mr. Miller was not confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. There is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.), motion for stay pending appeal denied, 482 F. 2d 669 (D.C. Cir. 1973). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals noted that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The previously cited O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending.

FFF:JGR:ph 4/11/83
cc: FFFielding/JGRoberts/Subject/Chron.
cc: Edwin Meese III, James A. Baker, III, Michael K. Deaver