RSC
Republican Study Committee

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Legislative Bulletin……………………………………..…March 18, 2004

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H.R. 1375—Financial Services Regulatory Relief Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0
Year to Date Prior to Today's Bills: 7

Total Cost of Discretionary Authorizations: $0
*Year to Date Prior to Today's Bills: $22.7 billion over five years***

Total Amount of Revenue Reductions: $37 million over five years
Year to Date Prior to Today's Bills: $299.5 million over five years

Total Change in Mandatory Spending: $2 million over five years*
Year to Date Prior to Today's Bills: -$258 million over five years

Total New State & Local Government Mandates: 6
Year to Date Prior to Today's Bills: 4

Total New Private Sector Mandates: 4
Year to Date Prior to Today's Bills: 7

*Reflects the estimated cost of H.R. 1375 after passage of the manager's amendment

**Includes about $12.3 billion of contract authority (a mandatory form of budget authority to incur obligations in advance of appropriations) under the Surface Transportation Extension Act of 2004 (H.R. 3783).

H.R. 1375—Financial Services Regulatory Relief Act (Capito)

Order of Business: The bill is scheduled for consideration on Thursday, March 18th, under a structured rule.

Summary: H.R. 1375 makes a variety of changes affecting the operations of financial institutions and federal agencies involved in regulating them. Specifically, the bill includes the following provisions:

Title I – National Banks:

- Allows a director of a national bank to be issued subordinated debt to satisfy the requirement that the director own shares in the bank (this provision has the effect of making it easier for a bank to convert from C corporation status to S corporation status).
- Eliminates the requirement that bank directors must be elected by cumulative voting.
- Simplifies the method by which a bank calculates dividends.
- Gives the Office of the Comptroller of the Currency (OCC) authority to remove a person who engages in improper conduct from the banking business. Currently this authority is given to other federal banking agencies, but not the OCC.
- Repeals the capital requirements a national bank must currently meet to establish an intrastate branch.
- Gives the Comptroller of the Currency discretion to adjust the amount of capital equivalency deposits for federal branches and agencies of foreign banks (note: this provision is struck in the manager's amendment).
- Allows a foreign bank to operate both a federal branch and a federal agency in the same state.
- Allows national banks to choose various forms of business organizations that are not corporate, such as a limited liability company.

Title II – Savings Associations:

- Gives federal thrift institutions the authority (currently given to national and state banks) to invest in an entity that primarily makes public welfare investments, up to five percent of its total capital and surplus (10 percent with Office of Thrift Supervision approval).
- Allows federal thrift institutions to merge with non-thrift affiliates.
- Eliminates the automobile loan asset limitation. Currently federal savings associations are limited in making auto loans in excess of 35 percent of its total assets.
- Exempts insurance agents representing a federal savings association in selling FDIC-insured certificates of deposit from registering as securities law agents under state law.
- Eliminates the lending limit on small business loans and increases the lending limit on other business loans from 10 percent to 20 percent of assets.
- Limits the basis under which a claim for monetary damages against the United States can be dismissed in cases related to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank (CBO estimates that this provision will increase direct spending by $15 million over the 2004-2013 period) (note: this provision is struck in the manager's amendment).

Title III – Credit Unions:

- Allows privately insured credit unions to apply to become members of a Federal Home Loan Bank.
- Allows certain federal credit unions to lease federal land at no cost.

- Permits credit unions to purchase investment securities.
- Increases loan term limitations from 12 years to 15 years.
- Increases the investment limit in credit union service organizations from 1 percent to 3 percent.
- Excludes loans to non-profit religious organizations from the member business loan limit.
- Exempts federally insured credit unions from merger notification requirements.

Title IV – Depository Institutions:

- Removes the restriction on banks expanding through de novo interstate branching (where a bank expands into another state by establishing a new branch, not by acquiring another bank).
- Sets a 30-day statute of limitations for banks and credit unions to challenge decisions by the OCC, Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) to appoint a receiver.
- Eliminates the authority of a state to prohibit an out-of-state bank from acquiring an in-state bank that has existed for less than five years.
- Eliminates some reporting requirements relating to insider lending.
- Permits thrifts to invest in bank service companies and bank to invest in thrift service companies.

Title V – Depository Institution Affiliates:

- Applies the current-law prohibition on cross marketing only to entities controlled by a financial holding company.
- Permits finance companies in states with a constitutional usury ceiling to charge the same interest rates as national and state banks.

Title VI – Banking Agencies:

- Expands interagency data sharing to all federal banking agencies.
- Allows the post-approval antitrust review period to be shortened from 15 to 5 days if the Attorney General has agreed that the acquisition or merger would not have anti-competitive effects.
- Prohibits a person convicted of a crime involving dishonesty or a breach of trust to participate in the affairs of an uninsured national or state bank and uninsured offices of foreign banks without FDIC approval.
- Establishes a fine and prison sentence (not more than 1 year) for an employee of a financial institution that extends prohibited credit to an examiner. Provides limited waivers from the prohibition on examiners receiving credit from a bank being examined (note: this provision is struck in the manager's amendment).
- Removes the requirement that federal banking agencies demonstrate that an independent contractor "knowingly and recklessly" violated law/regulation or engaged in unsound practices before holding the contractor liable.
- Authorizes the FDIC to impose civil monetary penalties of up to $1 million per day on any individual, corporation, or other entity for misrepresentation of FDIC insurance coverage.
- Eliminates compensation limits for members of Federal Home Loan Bank boards.

- ➢ Increases the term of Federal Home Loan Bank directors from three years to four years.
- ➢ Requires a biennial report from each federal banking agency on the status of employment of minority individuals and women.

Additional Background: According to the Financial Services and Judiciary Committees, H.R. 1375 is the result of ideas and input from the banking community and its regulators.

Amendments:
Oxley #11 (Manager's amendment): Limits de novo branching for industrial loan companies (ILCs) to those whose business is more that 85% financial in nature and, in the case of ILCs whose business is less than 85% financial in nature, limits branching to those ILCs who had Federal deposit insurance before October 1, 2003. Also strikes the following provisions:

- Giving the Comptroller of the Currency discretion to adjust the amount of capital equivalency deposits for federal branches and agencies of foreign banks
- Limiting the basis under which a claim for monetary damages against the United States can be dismissed in cases related to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank
- Establishing a fine and prison sentence (not more than 1 year) for an employee of a financial institution that extends prohibited credit to an examiner and providing limited waivers from the prohibition on examiners receiving credit from a bank being examined

Waters #4: Strikes section 609 of the bill, which allows the post-approval antitrust review period to be shortened from 15 to 5 days if the Attorney General has agreed that the acquisition or merger would not have anti-competitive effects.

Bachus #13: Strikes section 614 of the bill, which removes the requirement that federal banking agencies demonstrate that an independent contractor "knowingly and recklessly" violated law/regulation or engaged in unsound practices before holding the contractor liable.

Weiner #3: Prohibits banks from charging a fee to depositors of a check returned due to insufficient funds.

Jackson-Lee #9: Adds a sense of Congress that when a requesting agency obtains expedited action to approve a merger transaction application between multiple depository institutions, careful consideration is placed on the impact that the transaction will have on affected communities and customers of any or all of the applicant institutions.

Kelly/Toomey #8: Removes the prohibition on banks from paying interest on business checking accounts and would allow the Federal Reserve to pay interest on so-called "sterile" reserves (note: this text is essentially H.R. 758, the Business Checking Freedom Act, which passed the House by voice vote on April 1, 2003. More on H.R. 758 can be found here http://johnshadegg.house.gov/rsc/LB4103.pdf).

Committee Action: The Subcommittee on Financial Institutions and Consumer Credit approved H.R. 1375 by voice vote on April 9, 2003. The full Committee on Financial Services favorably reported the bill by voice vote on May 21, 2003.

The Judiciary Committee favorably reported H.R. 1375 by voice vote on July 9, 2003.

Cost to Taxpayers: The Congressional Budget Office estimates that H.R. 1375 would reduce federal revenues by $37 million over five years and $117 million over the 2004-2013 period. CBO also found that the bill would increase direct spending by $17 million over five years and $22 million over the 2004-2013 period, however the manager's amendment to the bill that will be offered on the floor will eliminate at least $15 million of the $22 million ten-year increase.

Does the Bill Create New Federal Programs or Rules?: The bill creates new federal rules, as described above, but does not create any new federal programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The bill contains both intergovernmental and private-sector mandates. In both cases, the mandates do not exceed the threshold of the Unfunded Mandates Reform Act. CBO has identified six intergovernmental and four private-sector mandates in the bill.

Constitutional Authority: The Financial Services Committee, in House Report 108-152 Part 1, cites Article I, Section 8, Clause 1 (general welfare) and Clause 3 (commerce clause). The Judiciary Committee, in House Report 108-152 Part 2, also cites Article I, Section 8, but fails to cite a specific clause.

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