Legislation Enacted

Among the legislation enacted during 1996, the Economic Growth and Regulatory Paperwork Reduction Act, the National Securities Markets Improvement Act, the Electronic Freedom of Information Act Amendments, and the Debt Collection Improvement Act directly affect the Federal Reserve System or the institutions it regulates.

Economic Growth and Regulatory Paperwork Reduction Act of 1996

On September 30, 1996, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009). The following discussion summarizes the portions of the act that significantly affect the Federal Reserve and the institutions it regulates.

Powers of State Member Banks

The act modifies the branching requirements for state member banks by eliminating the requirement that they maintain capital for their branches as if each branch were a separately chartered bank. The act also eliminates the requirement that state member banks file a branch application with the Federal Reserve System before installing an automatic teller machine (ATM) or remote service unit by excluding such entities from the definition of a branch.

In addition, the act eliminates the requirement that state member banks file branch closing notices for ATMs and for branch relocations that are within the immediate neighborhood and do not substantially affect the nature of the business or customers served; the act also excludes the notice requirement for a branch closing in an emergency acquisition or when assistance is provided by the Federal Deposit Insurance Corporation (FDIC).

The act permits well-capitalized banks rated CAMEL 1 or 2 to invest in bank premises in amounts up to 150 percent of the bank's capital and surplus as long as the bank provides the Board with a thirty-day after-the-fact notice of the investment.

The act also permits the Board to conduct a full-scope, on-site examination of certain well capitalized, well managed state member banks rated CAMEL 1 or 2 every eighteen months rather than every twelve months.

SAIF/BIF

The act capitalizes the Savings Association Insurance Fund (SAIF) at 1.25 percent of insured thrift institution deposits through a one-time special assessment on SAIF-assessable deposits held as of March 31, 1995. Weak institutions, as well as certain others, may be exempt from the special assessment if the FDIC determines it would reduce risk to the SAIF. In addition, the act reduces the special assessment by 20 percent for certain Oakar banks (banks formed by the merger of SAIF-insured and BIF-insured institutions) and would reduce their assessments going forward.

The act also requires banks, after December 31, 1996, to pay 20 percent of the interest on the bonds that funded the initial capitalization of SAIF (FICO bonds), but banks would be required to pay a full pro rata share of the interest obligation beginning after the earlier of December 31, 1999, or the date on which the last savings association ceases to exist.

The act merges SAIF and the Bank Insurance Fund (BIF) on January 1, 1999, but only if no insured depository institution is a savings association on that date.

Previously, both the Bank Merger Act and the Federal Deposit Insurance Act (FDI Act) required advance written approval from the appropriate federal banking agency to form Oakar banks. The act eliminates the duplicative requirement of advance written approval under the FDI Act for Oakar transactions and retains only the requirement of advance written approval under the Bank Merger Act.

Under the act, the FDIC may refund excess payments from an insured bank or it may credit the excess toward future payments from that bank. In addition, if the balance in BIF exceeds the balance required to meet the designated reserve ratio applicable to such fund, the excess shall be refunded to insured banks.

Bank Holding Company Act

The act allows well capitalized and well managed bank holding companies (BHCs) that control generally well capitalized and well managed depository institutions, to engage de novo, without advance Board approval, in nonbanking activities approved by regulation. In addition, to be eligible for this exception, the BHC or its subsidiaries must not be subject to an administrative enforcement action or a cease and desist order pursuant to section 8 of the FDI Act during the preceding twelve-month period. The act also establishes a streamlined process for these well run BHCs to obtain Board approval to acquire companies (except thrift institutions) engaged in permissible nonbanking activities subject to certain investment limitations and to engage de novo in nonbanking activities that have been approved only by order.

Existing law allows the Board to permit a BHC to acquire shares of a company engaged in nonbanking activities, including a savings association, if the Board determined, after notice and an opportunity for a hearing, that the company is engaged in activities so closely related to banking that they are a proper incident thereto. The act removes the requirement that the Board provide an opportunity for a hearing except in cases in which a BHC acquires a savings association.

The act exempts BHCs that own thrift institutions from the provisions of the Savings and Loan Holding Company Act and requires the Board to solicit comments from the Office of Thrift Supervision (OTS) on any BHC acquisition of a thrift institution and to consult with the OTS on examinations and enforcement actions for BHCs that own thrift institutions.

The act eliminates notices of new director or senior executive officers (914 notices) currently required for banks chartered within the past two years or that have undergone a change in control within the past two years. However, the act gives the Board discretion to require notice in connection with the review of a prompt corrective action plan or otherwise. The act retains 914 notices for undercapitalized and troubled banks and allows an extension of up to ninety days of the period to disapprove an officer or director.

The act eliminates the requirement that Board approval be obtained to make a divestiture of shares effective for purposes of the BHC Act.

The act permits the Board to allow a BHC and its subsidiaries five years, instead of two, to dispose of stock acquired in satisfaction of a debt previously contracted. It also grants the Board authority to extend the five-year period to ten years in certain situations.

The act amends the BHC Act to permit nonbank banks to grow more than 7 percent per year without losing their exemption under the BHC Act. The act also amends the definition of credit card bank for purposes of the BHC Act to permit these institutions to offer credit cards secured by certain types of deposits.

The act permits the Board to exempt BHCs that control nonbank banks, trust banks, credit card banks, Edge Act and agreement corporations, and industrial loan companies from the anti-tying provisions of the BHC Act. In addition, the act permits the OTS to make exceptions to the anti-tying provisions of the Home Owners' Loan Act if the exceptions would not be contrary to the purposes of the anti-tying provisions and if they conform to the exceptions granted by the Board.

The act excludes from the definition of a BHC a qualified family partnership (QFP). A QFP is defined as a general or limited partnership that (1) does not control more than one registered BHC, (2) does not engage (except indirectly) in any business activity, (3) has no investments other than those permitted by a BHC, (4) is not obligated on any debt (either directly or as a guarantor), and (5) has partners, all of whom are either individuals related to each other by blood, marriage or adoption, or is a trust for the primary benefit of such individuals. The act requires QFPs to file a statement with the Board indicating, among other things, the basis for their eligibility, the activities and investments of the QFP, and an agreement to be subject to limited examinations.

Deposit Institution Management Interlocks Act

Under the Deposit Institution Management Interlocks Act (DIMIA), the act permits banks and BHCs with assets of up to $2.5 billion (increased from $1 billion) to have interlocking management with nonaffiliated institutions with assets of up to $1.5 billion (increased from $500 million) provided that the institutions are not located in the same community or metropolitan statistical area. It also permits grandfathered interlocks to continue indefinitely and restores the Board's authority to grant exemptions under DIMIA, subject to certain conditions.

Insider Lending Restrictions

The act permits the Board to exempt from insider lending restrictions preferential loans to executive officers and directors of a subsidiary of a company that controls a state member bank under the following conditions: the officer or director does not participate in major policy-making functions of the bank, and the assets of the subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the bank and the subsidiary (and is not controlled by any other company).

The act also excludes from the insider lending restrictions a state member bank's company-wide benefit or compensation plan as long as it is widely available to employees of the bank and as long as it does not give any officer, director or principal shareholder (or related interest) preference over other employees of the bank.

Examination Activities

To make examinations by federal banking agencies well coordinated, the act requires them to have their examiners consult with each other, coordinate their examinations of depository institutions, and resolve any inconsistencies in their exam recommendations. The act also directs the federal banking agencies to consider appointing an "examiner-in-charge" to coordinate examinations of depository institutions.

Audits

The act eliminates the requirement for attestation by an independent auditor under the FDI Act. The act also permits the internal audit committees of certain insured depository institutions to consist of some (but not a majority) of inside directors, rather than entirely outside directors, if the appropriate federal banking agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the committee.

Truth in Savings

Five years after enactment, the act eliminates civil liability for violations Truth in Savings Act. The act also repeals the definition of "indoor lobby sign," exempts certain credit unions from the act and eliminates any disclosure requirements for rollover certificates of deposit with terms of less than thirty days.

Home Mortgage Disclosure Act

With regard to the Home Mortgage Disclosure Act (HMDA), the act increases the exempt asset level (the level below which institutions are exempt from HMDA) from $10 million to $28 million, a percentage rise equal to the cumulative percentage increase in the CPI since 1975. The act requires the exemption to be adjusted annually in the future in accordance with changes in the CPI. The act also gives institutions an alternative method for making HMDA data publicly available by allowing information to be maintained at the bank's home or branch offices as long as the public notice states that such information is available upon request.

Equal Credit Opportunity Act

The act creates a legal privilege for information developed by creditors through "self-tests" that are conducted to determine the level or effectiveness of their compliance with the Equal Credit Opportunity Act (ECOA), provided that appropriate corrective action is taken to address any possible violations.

Privileged information may not be obtained by a government agency for use in an examination or investigation relating to fair lending compliance, or by a government agency or credit applicant in any civil proceeding in which a violation of ECOA is alleged. The act also provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction. The act directs the Board to promulgate final regulations implementing these changes within six months of enactment.

Real Estate Settlement Procedures Act

The act directs the Board and the Department of Housing and Urban Development (HUD) to simplify and improve the disclosure requirements on transactions subject to both the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). This includes providing a "single format" for such disclosures. The Board and HUD must propose new regulations within six months of enactment or, when necessary, submit legislative recommendations to ‘‘simplify and unify’’ RESPA and TILA disclosures.

The measure also establishes less onerous procedures for lenders to inform borrowers that mortgage servicing may be transferred by the lender to another entity.

Truth in Lending Act

The act permits the Board to exempt classes of transactions, except for certain high-cost mortgages, from coverage under all or part of TILA if the Board determines that coverage does not provide a meaningful benefit to consumers. The act lists several factors the Board must take into account in determining whether to exempt transactions. In addition, the act allows ‘‘sophisticated borrowers’’ (which it defines as those with an annual earned income of more than $200,000 and net assets of more than $1 million) to waive their rights to receive TILA disclosures.

The act also provides an alternative disclosure requirement for adjustable-rate residential mortgages (ARMs). The alternative may provide that payments may ‘‘increase or decrease substantially’’ as long as the statement also indicates the maximum future interest rate and payments on a $10,000 loan originated at a recent interest rate.

The act allows the Board and other agencies to reduce or spread out restitution required for TILA violations in cases where full, immediate restitution would jeopardize the safety and soundness of the institution. The act also corrects an error in the 1995 TILA amendments that unintentionally provided retroactive relief from civil liability for certain TILA violations with regard to ‘‘any’’ consumer credit transaction. The act limits the relief to ‘‘closed-end home secured’’ credit transactions. This change is effective September 30, 1995.

Fair Credit Reporting Act

The act amends the Fair Credit Reporting Act (FCRA) and grants the Board interpretive authority, in consultation with the other federal banking agencies, for determining how the provisions of FCRA apply to banking institutions regulated by the federal banking agencies (for example, national and state member banks). The act also directs the Board to report to the Congress by March 31, 1997, on the availability to the public of sensitive identifying information about consumers, the possibility that such information could be used for financial fraud and the potential for fraud, or risk of loss, if any, to insured depository institutions. The report is also to include any suggestions for legislative change.

Electronic Fund Transfer Act

The act directs the Board to report to the Congress no later than six months after enactment on whether the Electronic Fund Transfer Act (EFTA) could be applied to electronic stored-value products without adversely affecting their cost, development, and operation, and whether alternatives to regulation can better achieve the purposes of the EFTA. In addition, the act prohibits the Board from taking any regulatory action regarding stored-value products for either three months after the report to the Congress or nine months after enactment, whichever is later.

Consumer Leasing Act

The act directs the Board to issue regulations updating and clarifying leasing requirements and definitions and addressing other consumer leasing issues. The Board must issue model disclosure forms for consumer leasing which, if properly used by lessors, will constitute compliance with required disclosure requirements.

The act modifies lease advertising requirements. It eliminates three disclosures currently required in lease advertising: consumer liability at lease-end for the difference between the property's anticipated fair market value and its appraised actual value; the ''amount or method of determining the amount'' of any such liability; and the disclosure of any purchase option, including the option price.

Instead, lease advertisements that contain certain ''trigger terms'' (such as the amount of any payment) must clearly and conspicuously state the following terms: that the transaction is a lease; the total of initial payments required on or before lease consummation and delivery of the property; any required security deposit; the number, amount and timing of scheduled payments; and, in leases in which the consumer has an end-of-term liability based on the property's residual value, that an extra charge may be imposed at lease-end.

Foreign Banks

The act requires the Board to reduce burden and avoid unnecessary duplication in examining branches and agencies of foreign banks. It also eliminates the requirement of annual on-site exams for branches and agencies of foreign banks and provides instead that they be examined as frequently as would a state member bank.

The act provides that, even if a foreign bank is not subject to comprehensive supervision or regulation in its home country, the Board may still approve the bank's application to establish a U.S. office if the bank's home country is actively working to establish a system of bank supervision and if all other factors are consistent with approval. The act directs the Board, in exercising this authority, to consider whether the bank has implemented procedures to combat money laundering. The act also imposes a processing deadline for such applications.

The act permits the Board to allow banks to invest up to 20 percent of their capital and surplus in an Edge or agreement corporation if the Board determines that an investment greater than 10 percent would not be unsafe or unsound.

The act eliminates the requirement that banks (except foreign banks and their affiliates) file consolidated reports with the appropriate federal banking agency if any of their extensions of credit, in the aggregate, are secured directly or indirectly by 25 percent or more of any class of shares of the same insured depository institution.

Bank Service Companies

The act expands the types of entities included under the definition of a bank service corporation (redefined as a bank service company) to include limited liability companies. It defines ''limited liability company'' as a company, partnership, trust, or similar business entity that provides that a member or manager of the entity is not personally liable for a liability of the entity solely because that person is a member or manager of it. This amendment allows bank service companies to take advantage of the limited liability rules typically available to corporations and the flow-through tax benefits available to partnerships.

Regulatory Relief

The act requires each federal banking agency to review its regulations every ten years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. The review must allow for public comment. Each agency must publish in the Federal Register a summary of the comments and the agency's response and report to the Congress on the comments and on any legislative changes necessary to eliminate regulatory burdens.

In addition, the act amends the Riegle Community Development and Regulatory Improvement Act of 1994 to require each federal banking agency to determine whether existing regulations require insured depository institutions and insured credit unions to produce unnecessary internal written policies and, if appropriate, to eliminate such policies.

Reports Requirements

The act eliminates 12 U.S.C., section 251, which requires the Board to publish an annual report on the availability of credit to small businesses. However, the act creates a new requirement that, within twelve months of enactment and every sixty months thereafter, the Board—in consultation with other federal banking agencies, the Small Business Administration, and the Secretary of Commerce—report to the Congress on the availability of credit to small businesses. The report should include a description of the demand for, and availability of, credit, the range of credit options and types of credit products available, and the credit needs and types of risks associated with lending to small businesses.

The act requires the Board to submit to the Congress, within 180 days of enactment, a report on actions being taken or to be taken to eliminate and conform inconsistent and duplicative accounting and reporting requirements, as required by section 121 of the FDIC Improvement Act. Section 121 requires regulators to use uniform accounting principles consistent with, or no less stringent than, generally accepted accounting principles (GAAP).

The act repeals 12 U.S.C., section 1833, which requires the Board to report annually to the Congress on, among other things, the number of formal and informal supervisory, administrative, and civil enforcement actions initiated each year; the number of individuals and institutions against whom civil money penalties were assessed; and a description of all other enforcement efforts and initiatives relating to unsafe and unsound practices, criminal misconduct, and insider abuse. The act also repeals 12 U.S.C., section 3912, which requires the Board to report annually to the Congress on certain aspects of the international lending operations of banking institutions.

Farmers and Ranchers in Drought-Stricken Areas

The act declares the sense of the Congress to be that bank regulators should work with farmers and ranchers in drought areas to allow them to meet their financial obligations to be met without imposing burdens on them.

National Securities Markets Improvement Act of 1996

The National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3416) affects the Board's authority in two ways. First, the Board no longer has the authority to regulate loans to certain registered broker–dealers unless it finds that such rules are necessary or appropriate in the public interest or for the protection of investors. Second, it repeals section 8(a) of the Securities Exchange Act, which limited sources of broker–dealer funding and required nonmember banks that engage in such lending to file agreements with the Federal Reserve.

Electronic Freedom of Information Act Amendments of 1996

Under the Electronic Freedom of Information Act Amendments of 1996, (Pub. L. 104–231, 110 Stat. 3048), federal agencies, including the Board, are required to make any records processed and disclosed in response to a request under the Freedom of Information Act (FOIA) routinely available for public inspection and copying if the agency determines that they "have become or are likely to become the subject of subsequent requests." The act also requires agencies to maintain reference material or a guide to aid the public in making a FOIA request. In addition, agencies must make certain records created on or after November 1, 1996, available to the public by electronic means.

The act also increases the time limit for responding to FOIA requests from ten to twenty working days and encourages agencies that experience difficulties in meeting FOIA's time limits to promulgate regulations providing for "multitrack processing" of FOIA requests. In addition, the act allows additional time for responding to a FOIA request if unusual circumstances are involved, such as the volume of records sought. The act defines the term "compelling need" for purposes of determining whether a FOIA request should receive expedited processing and they indicate when the agency must specify the amount of information that was withheld from the requestor.

The FOIA amendments also limit the situations in which the Board may obtain a stay of judicial proceeding on the basis of a FOIA backlog, and they modify the content, timetable, and procedures for filing annual reports to the Congress under FOIA.

Debt Collection Improvement Act of 1996

On April 26, 1996, the Congress passed the Debt Collection Improvement Act of 1996, (Pub. L. 104–134, 110 Stat. 1321–376), which amended the Federal Financial Management Act of 1994 by requiring that all federal payments (defined as federal wage, salary, retirement, benefit, and reimbursement payments) be made electronically within ninety days of enactment. The act allows a waiver of this requirement if the recipient of the federal payment certifies in writing that he or she does not have an account with a financial institution. This general waiver expires as of January 1, 1999, at which time all federal payments must be made electronically unless the Secretary of the Treasury finds that compliance would impose a hardship or that the class or types of checks or other circumstance do not require electronic payment. ■