AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 109–356
Part 2

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2005

FEBRUARY 16, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3505]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3505) to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment adopted by this committee is identical to the text reported by the Committee on Financial Services shown in their report filed December 17, 2005 (Rept. 109–356, Part 1).

TABLE OF CONTENTS

	Page
The Amendment	1
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	4
Committee Consideration	4
Vote of the Committee	4
Committee Oversight Findings	4
New Budget Authority and Tax Expenditures	4
Congressional Budget Office Cost Estimate	4
Performance Goals and Objectives	12
Constitutional Authority Statement	12
Section-by-Section Analysis and Discussion	12
Changes in Existing Law Made by the Bill, as Reported	15

THE AMENDMENT

The amendment adopted by this committee is identical to the text reported by the Committee on Financial Services shown in their report filed December 17, 2005 (Rept. 109–356, Part I).

PURPOSE AND SUMMARY

As reported by the Committee on the Judiciary, H.R. 3505, the "Financial Services Regulatory Relief Act of 2005," is intended to alter or eliminate statutory banking provisions in order to reduce the growing regulatory burden on insured depository institutions, improve their productivity, and to make needed technical corrections to current law. H.R. 3505 contains a broad range of constructive provisions that, taken as a whole, will allow banks and other depository institutions to devote more resources to the business of lending to consumers and less to the bureaucratic maze of compliance with outdated and unneeded regulations. Reducing the regulatory burden on financial institutions lowers the cost of credit and will help restore vibrancy to the national economy.

BACKGROUND AND NEED FOR THE LEGISLATION

On November 16, 2005, the Committee on Financial Services reported H.R. 3505, the "Financial Services Regulatory Relief Act of 2005." [1] The bill was sequentially referred to the Committee on the Judiciary for a period ending not later than December 31, 2005. On December 31, 2005, the sequential referral was extended for a period ending not later than February 3, 2006, and later extended for a period ending not later than February 24, 2006. The sections within the jurisdiction of the Committee on the Judiciary pertain to the operation of the Federal courts, criminal law enforcement, and the regulation of the banking industry as it pertains to antitrust. This legislation is substantially similar to H.R. 1375, the "Financial Services Regulatory Relief Act of 2003," which was reported from the Committee on the Judiciary last Congress.[2]

Congress has not passed structural reforms to America's banking industry since the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was enacted in 1989. At that time, the national banking industry and the broader economy were recovering from a savings and loan crisis that undermined public confidence in America's financial institutions. As a result, Congress enacted FIRREA to help restore the integrity and reliability of the banking industry. H.R. 3505 addresses many shortcomings in that law. For example, economic analysts have estimated that the annual cost of compliance with various State and Federal banking regulations is nearly $36 billion. While effective regulation of the financial services industry is central to the preservation of public trust in financial institutions, excessive regulation undermines competition and consumer choice, results in higher service fees for consumers, and stifles innovation among competing institutions.

H.R. 3505 provides the following regulatory improvements for national banks: (1) removes the prohibition on national and State banks expanding across State lines by opening branches; (2) allows the use of subordinated debt instruments to meet eligibility requirements for national banks to benefit from subchapter S tax treatment; (3) eliminates duplicative and costly reporting requirements on banks regarding lending to bank officials; (4) changes the exemption from the prohibition on management interlocks for

[1] *See* H.R. Rep. No. 109–356, Part I (2005).
[2] *See* H.R. Rep. No. 108–152, Part II, (2003).

banks in metropolitan statistical areas from $20 million in assets to $100 million; and (5) streamlines bank merger application regulatory requirements.

The legislation provides the following regulatory improvements for savings associations: (1) gives savings associations parity with banks with respect to Securities and Exchange Commission (SEC) broker-dealer and investment adviser registration requirements; (2) removes auto lending and small business lending limits and expands business lending limit for Federal thrifts; (3) allows Federal thrifts to merge with one or more of their non-thrift subsidiaries or affiliates, as national banks; (4) increases the aggregate limit on commercial real estate loans by Federal thrifts from 400 to 500 percent of capital; and (5) gives Federal thrifts the same authority as national and State banks to make investments primarily designed to promote community development.

H.R. 3505 provides the following regulatory improvements for credit unions: (1) allows privately insured credit unions to apply for membership to the Federal Home Loan Bank system; (2) expands the investment authority of Federal credit unions; (3) permits offering of check cashing and money transfer services to eligible members; (4) increases the limit on investment by Federal credit unions in credit union service organizations from 1 percent to 3 percent of shares and earnings; (5) raises the general limit on the term of Federal credit union loans from 12 to 15 years; and (6) allows for expedited consideration of credit union mergers.

In addition, H.R. 3505 provides the following regulatory improvements for Federal financial regulatory agencies: (1) provides agencies the discretion to adjust the examination cycle for insured depository institutions to use agency resources in the most efficient manner; (2) increases from $250 million to $1 billion the asset size of well-capitalized, well-managed banks eligible for an 18-month exam schedule and allows banks with less than $1 billion in assets to file short-form call reports; (3) authorizes the agencies to share confidential supervisory information concerning an examined institution; (4) modernizes agency recordkeeping requirements to allow use of optically imaged or computer scanned images; and (5) clarifies that agencies may suspend or prohibit institution-affiliated parties charged with certain crimes from participation in the affairs of any depository institution and not only the institution with which the individual is or was associated.

H.R. 3505 also addresses some financial institutions' concerns regarding duplicative and burdensome anti-money laundering requirements. Title VII seeks to make a number of changes—some statutory and others directing swift regulatory changes—to balance law enforcement's needs to prevent terrorist financing and money laundering with the industry's very real concerns about excessive burdens. The bill streamlines the process by which legitimate businesses with large cash-based operations may be exempted from certain requirements to file "currency transaction reports" (CTRs) on "seasoned customers," and directs the Secretary of the Treasury to prescribe regulations under which the filing institution may retain the exemption if the institution is acquired or merged. The bill also contains provisions to ease or eliminate inconsistent or duplicative requirements to file Suspicious Activity Reports (SARs), and directs

the Secretary to devise computer-based methods of filing required reports electronically.

These improvements will allow financial institutions to devote more resources to the business of lending to consumers and less to compliance with outdated and unneeded regulations. Reducing the regulatory burden will serve to lower credit costs for consumers and help invigorate the national economy.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 3505.

COMMITTEE CONSIDERATION

On December 17, 2005, the House Committee on the Judiciary received a sequential referral of H.R. 3505. On February 15, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 3505 to the full House by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 3505.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because the provisions of this legislation within the jurisdiction of the Judiciary Committee do not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3505, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

FEBRUARY 16, 2005.

Hon. F. JAMES SENSENBRENNER Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3505, the Financial Services Regulatory Relief Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for

federal costs), Pam Greene (for revenues), Sarah Puro (for the state and local impact), and Judith Ruud (for the private-sector impact).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 3505—Financial Services Regulatory Relief Act of 2005

Summary: H.R. 3505 would affect the operations of financial institutions and the agencies that regulate them. Some provisions would address specific sectors: national banks could more easily operate as S corporations or adopt other alternative organizational structures; thrift institutions would be given some of the same investment, lending, and ownership options available to banks; credit unions would have new options for investments, lending, mergers, and leasing federal property; and certain privately insured credit unions could become members of the Federal Home Loan Bank system. The bill would provide the Federal Deposit Insurance Corporation (FDIC) with new enforcement authority and modify regulatory procedures governing certain types of transactions. It also would give financial regulatory agencies more flexibility in sharing data, retaining records, and scheduling examinations. Finally, the bill would direct the Secretary of the Treasury to develop various reports, regulations, and programs related to currency transactions.

CBO estimates that enacting this bill would reduce federal revenues by $64 million over the 2006–2011 period and by a total of $167 million over the 2006–2016 period. In addition, we estimate that direct spending would increase by $2 million over the 2006–2011 period and by a total of $7 million over the 2006–2016 period. Provisions affecting programs funded by annual appropriations would cost another $4 million in 2007, CBO estimates, assuming appropriation of the necessary amounts.

H.R. 3505 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with the requirements would be small and would not exceed the threshold established in UMRA ($64 million in 2006, adjusted annually for inflation).

H.R. 3505 contains several private-sector mandates as defined in UMRA. Those mandates would affect some depository institutions controlled by commercial firms, certain depository institutions and institution-affiliated parties, nondepository institutions that control depository institutions, uninsured banks, bank holding companies and their subsidiaries, and savings and loan association holding companies and their subsidiaries. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct costs of complying with the private-sector mandates in the bill would not exceed the annual threshold established by UMRA ($128 million in 2006, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3505 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN REVENUES											
Estimated Revenues: [1]											
S Corporation Status	*	−6	−11	−14	−16	−13	−14	−15	−16	−17	−18
Business Organization Flexibility	0	*	*	−1	−1	−2	−2	−4	−5	−6	−6
Total	*	−6	−11	−15	−17	−15	−16	−19	−21	−23	−24
CHANGES IN DIRECT SPENDING											
Estimated Budget Authority	*	*	*	*	1	1	1	1	1	1	1
Estimated Outlays	*	*	*	*	1	1	1	1	1	1	1
CHANGES IN SUBJECT TO APPROPRIATION											
Estimated Authorization Level	0	4	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	4	0	0	0	0	0	0	0	0	0

[1] Negative revenues indicate a reduction in revenue collections.
Note.—* = Revenue loss or spending cost of less than $500,000.

Basis of estimate: Most of the budgetary impacts of this legislation would result from three provisions: section 101, which would make it easier for national banks to convert to S corporation status or alternative organization forms; section 302, which would allow certain federal credit unions to lease federal land at no charge; and title VII, which would direct the Secretary of the Treasury to complete various studies, programs, and regulatory proceedings. For this estimate, CBO assumes that H.R. 3505 will be enacted during fiscal year 2006.

H.R. 3505 also would affect the workload at agencies that regulate financial institutions. We estimate that the net change in agency spending would not be significant. Based on information from each of the agencies, CBO estimates that the change in administrative expenses—both costs and potential savings—would average less than $500,000 a year over the next several years. Expenditures of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the FDIC are classified as direct spending and would be covered by fees or insurance premiums paid by the institutions they regulate. Any change in spending by the Federal Reserve would affect net revenues, while adjustments in the budgets of the Department of the Treasury, Securities and Exchange Commission (SEC), and Federal Trade Commission (FTC) would be subject to appropriation.

Revenues

CBO estimates that enacting H.R. 3505 would reduce federal tax revenues collected from national and state-chartered banks and would have an insignificant effect on civil and criminal penalties collected for violations of the bill's provisions.

S Corporation Status. Under this bill, some national banks would find it easier to convert from C corporation status to S corporation status. Section 101 would allow directors of national banks to be issued subordinated debt to satisfy the requirement that directors of a bank own qualifying shares in the bank. This provision would effectively reduce the number of shareholders of a bank by remov-

ing directors from shareholder status, making it easier for banks to comply with the 100-shareholder limit that defines eligibility for subchapter-S election.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income-tax rates. Income earned by banks operating as S corporations is taxed only at the personal income-tax rates of the banks' shareholders and is not subject to the corporate income tax. The average effective tax rate on S-corporation income is lower than the average effective tax rate on C-corporation income. CBO estimates that enacting this provision would reduce revenues by a total of $60 million over the 2006–2011 period and by $140 million over the 2006–2016 period.

Based on information from the Federal Reserve Board, the OCC, and private trade associations, CBO expects that most of the banks that would be affected are small, although banks and bank holding companies with assets over $500 million would also be affected. In addition, states are likely to amend the rules for state-chartered banks to match those for national banks. CBO expects that most conversions to subchapter-S status would occur between 2006 and 2008 and that national banks would convert earlier than state-chartered banks.

Business Organization Flexibility. Under section 109 of this bill, the Comptroller of the Currency could allow national banks to organize in noncorporate form, for example as Limited Liability Companies (LLCs) as defined by state law. LLCs generally choose to be taxed as partnerships. Only a few states currently allow banks to organize as LLCs, however, and the IRS currently taxes state-chartered bank-LLCs as C corporations. LLCs provide more organizational flexibility than S corporations while retaining the corporate characteristic of limited liability.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income tax rates. Income earned by partnerships—like that earned by S corporations—is taxed only at the personal income-tax rates of the partners and is not subject to the corporate income tax. The average effective tax rate on partnerships is lower than the average effective tax rate on C-corporation income but is similar to the average effective tax rate on S-corporation income.

Based on information from the OCC, the FDIC, and private trade associations, CBO views that it is quite possible that the OCC would alter its regulations to allow national banks to organize in noncorporate form. CBO expects that, over the next decade, most states that do not currently allow banks to organize as LLCs will begin allowing them to do so out of competitiveness concerns. CBO also expects that the IRS is likely to reconsider allowing pass-through tax treatment to banks organized as LLCs and may allow such tax treatment at some point in the next decade. CBO believes that banks forming as LLCs would most likely be newly chartered institutions. Over the next decade, only a very limited number of banks would convert from C corporation or S corporation status to LLCs taxed as partnerships. CBO estimates that enacting this provision would reduce revenues by a total of $4 million over the 2006–2011 period and by $27 million over the 2006–2016 period.

Civil and Criminal Penalties. H.R. 3505 would make all depository institutions—not just insured institutions—subject to certain civil and criminal fines for violating rules regarding breach of trust, dishonesty, and certain other crimes. It also would authorize the FDIC to take enforcement action or impose civil penalties of up to $1 million a day on any individual, corporation, or other entity that falsely implies that deposits or other funds are insured by the agency. Based on information from the FDIC, CBO expects that enforcement actions would likely deter most individuals or institutions from violating rules regarding breach of trust, dishonesty, or certain other crimes. As a result, we estimate that any additional penalty collections under those provisions would not be significant.

Direct spending

CBO estimates that enacting H.R. 3505 would increase direct spending by $2 million over the 2006–2011 period and about $7 million over the 2006–2016 period by reducing offsetting receipts collected from credit unions that lease federal facilities. Enacting the bill also could affect the cost of deposit insurance, but CBO has no basis for estimating the amount of any change.

Credit Union Leases. Section 302 would allow federal agencies to lease land to federal credit unions without charge under certain conditions. Under existing law, agencies may allocate space in federal buildings without charge if at least 95 percent of the credit union's members are or were federal employees. Some credit unions, primarily those serving military bases, have leased federal land to build a facility. Prior to 1991, leases awarded by the Department of Defense (DoD) were free of charge and for terms of up to 25 years; a statutory change enacted that year limited the term of such leases to five years and required the lessee to pay a fair market value for the property. According to DoD, about 35 credit unions have leased land since 1991 and are paying a total of about $525,000 a year to lease federal property. Those proceeds are recorded as offsetting receipts, and any spending of those payments is subject to appropriation.

CBO expects that enacting this provision would result in a loss of offsetting receipts from all credit union leases. Those lessees currently paying a fee would stop making those payments after they renew their current leases, all of which should expire within the next five years. In addition, credit unions that have long-term, no-cost leases would be able to renew them without becoming subject to the fees they otherwise would pay under current law. CBO estimates that enacting this provision would cost a total of about $2 million over the next six years and an average of about $700,000 annually after 2011.

Deposit Insurance. Several provisions in the bill could affect the cost of federal deposit insurance. For example, the bill would streamline the approval process for mergers, branching, and affiliations, which could give eligible institutions the opportunity to diversify and compete more effectively with other financial businesses. In some cases, such efficiencies could reduce the risk of insolvency. It is also possible, however, that some of the new lending and investment options could increase the risk of losses to the deposit insurance funds.

CBO has no clear basis for predicting the direction or the amount of any change in spending for insurance that could result from the new investment, lending, and operational arrangements authorized by this bill. The net budgetary impact of such changes would be negligible over time, however, because any increase or decrease in costs would be offset by adjustments in the insurance premiums paid by banks, thrifts, or credit unions.

Spending subject to appropriation

H.R. 3505 also would affect spending for activities funded by annual appropriations. CBO estimates implementing those provisions would cost about $4 million in 2007, assuming appropriation of the necessary amounts.

Title VII would direct the Secretary of the Treasury to develop and implement various measures related to the reporting of currency transactions. Based on information from the Treasury, CBO estimates that it would cost about $4 million to complete the regulations, reports, and programs required by the bill, assuming appropriation of the necessary amounts.

In addition, section 201 provides thrift institutions with exemptions from broker-dealer and investment-advisor registration requirements similar to those accorded banks. Section 313 provides similar exemptions for federally insured credit unions. Based on information from the SEC, CBO estimates that the budgetary effects of those exemptions would not be significant.

Finally, section 312 would exempt federally insured credit unions from filing certain acquisition or merger notices with the FTC. Under current law, the FTC charges filing fees ranging from $45,000 to $280,000, depending on the value of the transaction. The collection of such fees is contingent on appropriation action. Based on information from the FTC, CBO estimates that this exemption would have no significant effect on the amounts collected from such fees.

Estimated impact on State, local, and tribal governments: H.R. 3505 contains intergovernmental mandates as defined in UMRA, because it would preempt certain state laws and place new requirements on certain state agencies that regulate financial institutions. CBO estimates that the cost of complying with the requirements would be small and would not exceed the threshold established in UMRA ($64 million in 2006, adjusted annually for inflation).

Provisions in section 209 would preempt certain state securities laws by prohibiting states from requiring agents who represent a federal savings association to register as brokers or dealers if they sell deposit products (CDs) issued by the savings association. Such a preemption would impose costs (in the form of lost revenues) on those states that currently require such registration. Based on information from representatives of the securities industry and securities regulators, CBO estimates that losses to states as a result of this prohibition would total less than $1 million a year.

Other provisions of the bill would place requirements on state regulators of credit unions to review documents related to federal deposit insurance and to provide certain information to the NCUA. Also, section 401 would extend certain preemptions of state laws related to mergers between insured depository institutions chartered in different states and preempt state laws that regulate cer-

tain fiduciary activities performed by insured banks and other depository institutions. Section 619 provides that only certain bank supervisors may impose supervisory fees on the bank. Based on information from industry authorities and state entities, CBO estimates that these provisions would impose minimal costs, if any, on state, local, and tribal governments.

Estimated impact on the private sector: H.R. 3505 contains several private-sector mandates as defined by UMRA. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct costs of mandates in the bill would not exceed the annual threshold established in UMRA ($128 million in 2006, adjusted annually for inflation).

Mandates in the bill include a prohibition of interstate branching by certain depository institutions controlled by commercial firms, an expansion of the authority of federal banking agencies over insured depository institutions and institution-affiliated parties with respect to safety and soundness enforcement, and restrictions on participation in the affairs of financial institutions of people convicted of certain crimes or the subject of certain criminal proceedings.

Prohibition of interstate branching by subsidiaries of commercial firms

The bill would prohibit interstate branching by industrial loan companies or industrial banks or certain other depository institutions that are controlled by firms that derive 15 percent or more of their revenues from nonfinancial activities. The prohibition would not apply to such institutions that became insured depository institutions before October 1, 2003.

This mandate only applies to a handful of institutions, none of which currently operates any branches. While the mandate does take away their option to open branches in other states, according to government and industry sources, the affected institutions had no immediate plans to use the option to branch. Consequently, CBO estimates that there would be little or no direct cost to comply with this mandate.

Enhanced safety and soundness enforcement

The bill would expand some of the authorities of federal banking agencies with respect to troubled or failing institutions, and institution-affiliated parties. Based on information from the FDIC, the cost to the private sector of these expanded authorities would be small.

The Gramm-Leach-Bliley Act allowed new forms of affiliations among depositories and other financial services firms. Consequently, insured depository institutions may now be controlled by a company other than a depository institution holding company (DIHC). The bill would amend current law to give the FDIC certain authorities concerning troubled or failing depository institutions held by those new forms of holding companies.

Cross-Guarantee Authority. Under current law, if the FDIC suffers a loss from liquidating or selling a failed depository institution, the FDIC has the authority to obtain reimbursement from any insured depository institution within the same DIHC. Section 407

would expand the scope of the FDIC's reimbursement power to include all insured depository institutions controlled by the same company, not just those controlled by the same DIHC.

The cost of this mandate would depend, among other things, on the probability of failure of the additional institutions subject to this authority and the probability that the FDIC would incur a loss as a result of those failures. The new authority would apply only to a handful of depository institutions. Based on information from the FDIC, CBO estimates that the cost of this mandate would not be substantial.

Golden Parachute Authority and Nonbank Holding Companies. Section 408 would allow the FDIC to prohibit or limit any company that controls an insured depository from making "golden parachute" payments or indemnification payments to institution-affiliated parties of troubled or failing insured depositories. (Institution-affiliated parties include directors, officers, employees, and controlling shareholders. Institution-affiliated parties also include independent contractors such as accountants or lawyers who participate in violations of the law or undertake unsound business practices that may cause a financial loss to, or adverse effect on, the insured depository institution.)

Based on information from the FDIC, CBO expects that only a few institutions would be covered by the new authority. In the event that the FDIC exercises this authority, CBO expects that the cost to institutions of withholding such payments would be administrative in nature and minimal, if any.

Restrictions on convicted individuals

Current law prohibits a person convicted of a crime involving dishonesty, a breach of trust, or money laundering from participating in the affairs of an insured depository institution without FDIC approval. The bill would extend that prohibition so that uninsured banks, bank holding companies and their subsidiaries, and savings and loan holding companies and their subsidiaries could not allow such persons to participate in their affairs without the prior written consent of their designated federal banking regulator.

Assuming that those institutions already screen potential directors, officers, and employees for criminal offenses, the incremental cost of complying with this mandate would be small.

Previous CBO estimate: On December 8, 2005, CBO transmitted a cost estimate for H.R. 3505 as ordered reported by the House Committee on Financial Services on November 16, 2005. The two versions of the bill are identical, but CBO updated the estimate of costs to reflect a later date of enactment and CBO's new baseline projections of corporate tax revenues.

The intergovernmental and private-sector mandates in both versions of the bill are the same.

Estimate prepared by: Federal Spending: Kathleen Gramp. Federal Revenues: Pam Greene. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Judith Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis, and G. Thomas Woodward, Assistant Director for Tax Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3505 is intended to alter or eliminate statutory banking provisions in order to reduce the growing regulatory burden on insured depository institutions, improve their productivity, and to make needed technical corrections to current law.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. 1, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis contains a description of principal provisions contained in H.R. 3505 as reported within the jurisdiction of the Committee on the Judiciary. H.R. 3505 was reported from the Committee on Financial Services on November 16, 2005. For a discussion of the provisions within the jurisdiction of the Committee on Financial Services, please see H.R. Rept. 109–356, Part I.

TITLE I—NATIONAL BANKS

Section 106. Clarification of Waiver of Publication Requirements for Bank Merger Notices

Section 106 amends the National Bank Consolidation and Merger Act (12 U.S.C. § 215(a) and 215(a)(2)) to provide the Comptroller with authority to waive the publication of notice requirement for bank mergers if the Comptroller determines that an emergency justifies such a waiver or if shareholders of the association or State bank agree by unanimous action to waive the publication requirement for their respective institutions.

TITLE II—SAVINGS ASSOCIATIONS

Section 203. Mergers and consolidations of Federal Savings Associations with nondepository institution affiliates

This section amends the Home Owners Loan Act (12 U.S.C. § 1464) to permit a Federal savings association to merge with any nondepository institution affiliate of the savings association.

Section 213. Citizenship of Federal Savings Associations for determining Federal court diversity jurisdiction

This section amends the Home Owners' Loan Act (12 U.S.C. § 1464) to establish that a Federal savings association shall be considered—for purposes of establishing diversity jurisdiction—a citizen only of the State where the savings association locates its main office. Diversity jurisdiction requires complete diversity among all parties to a lawsuit, i.e. that all parties be citizens of different States, and for there to be a minimum sum of $75,000 in controversy. Since they are chartered by the Federal government and not incorporated in a State, it has been held that federally-chartered savings associations that conduct business in more than

one State are not considered to be a citizen of any State. In contrast, a federally-chartered savings association that confines its business to a single State is considered to be a citizen of that State. This section will provide parity among federally-chartered savings associations. This section also ensures greater parity between federally-chartered savings associations and national banking associations by providing that each is considered to be a citizen of the State where it is located for purposes of diversity jurisdiction.

TITLE III—CREDIT UNIONS

Section 312. Exemption from pre-merger notification requirement of the Clayton Act

This section amends the Clayton Act to exempt credit unions from provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a) which require certain acquired and acquiring persons—including federally insured credit unions—to file a notification and report form with the Federal Trade Commission (FTC) to provide advance notification of mergers and acquisitions when the value of the transaction exceeds $50 million.

TITLE IV—DEPOSITORY INSTITUTIONS

Section 401. Easing restrictions on interstate branching and mergers

This section removes the prohibition in current law on national and State banks expanding through de novo interstate branching. Currently, banks may expand in this fashion only if a State's law expressly permits interstate branching. This section clarifies that a State member bank may establish a de novo interstate branch under the same terms and conditions applicable to national banks. The authority for a State to prohibit an out-of-State bank or bank holding company from acquiring, through merger or acquisition, an in-State bank that has not existed for at least five years is eliminated. Insured banks are authorized to acquire by merger or consolidation another insured depository institution (including a savings association) or an uninsured trust company that has a different home State than the acquiring insured bank. Industrial loan companies (ILCs) controlled by firms that derive 15 percent or more of their consolidated revenues from non-financial activities would not be permitted to engage in interstate branching, unless the ILC became an insured depository institution prior to October 1, 2003.

This section permits a State bank supervisor to authorize State trust companies it supervises to act in a fiduciary capacity on an interstate basis either with or without interstate offices. Such activities must not be in contravention of State law, but will not be deemed to contravene State law to the extent that a host State grants to its trust institutions the fiduciary powers sought to be exercised on an interstate basis. This authority parallels existing authority of national banks and national trust companies under the National Bank Act.

Section 402. Statute of limitations for judicial review of appointment of a receiver for depository institutions

This section amends the National Bank Receivership Act (12 U.S.C. § 191), the Federal Deposit Insurance Act (12 U.S.C. § 1821(c)(7)), and the Federal Credit Union Act (12 U.S.C. § 1787(a)(1)), to establish a uniform 30-day statute of limitations for national banks, State chartered non-member banks, and credit unions to challenge decisions by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the National Credit Union Administration to appoint a receiver. Current law generally provides that challenges to a decision by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision to appoint a receiver for an insured State bank or savings association must be raised within 30 days of the appointment (*see* 12 U.S.C. § 1821(c)(7) and § 1464(d)(2)(B)). However, there is no statutory limitation on national banks' ability to challenge a decision by the Office of the Comptroller of the Currency to appoint a receiver of an insured or uninsured national bank. As a result, the general six-year statute of limitations currently applies to national banks in these instances. This protracted time period severely limits the Office of the Comptroller of the Currency's authority to manage insolvent national banks that are placed in receivership and the ability of the Federal Deposit Insurance Corporation to wind up the affairs of an insured national bank in a timely manner with legal certainty.

TITLE VI—BANKING AGENCIES

Section 603. Penalty for unauthorized participation by convicted individual

A person convicted of a crime involving dishonesty or a breach of trust may not participate in the affairs of an insured depository institution without FDIC approval. Certain special purpose banks and foreign banking institutions operate without insured status (e.g., trust banks and foreign branches). This section extends the prohibition to include uninsured national and State member banks and uninsured offices of foreign banks.

Section 609. Clarification of suspension, removal, and prohibition authority of Federal banking agencies in cases of certain crimes by institution-affiliated parties

This section clarifies that the appropriate Federal banking agency may suspend or prohibit individuals who are the subject of criminal proceedings from participation in the affairs of any depository institution, instead of only a prohibition from the insured depository with which the institution affiliated party is or was associated. The agency may also use the prohibition authority even when the institution with which the individuals were associated ceases to exist.

Section 610. Streamlining depository institution merger application requirements

This section amends the Federal Deposit Insurance Act (12 U.S.C. § 1828) to require the Attorney General to provide within 30 days a report on the competitive factors associated with a deposi-

tory institution merger to a requesting agency. This section reduces this period to 10 days if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

Section 613. Prohibition on participation by convicted individual

This section would prohibit a person convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering from participating in the affairs of a bank holding company or an Edge or Agreement Corporation, without the consent of the Federal Reserve Board, and from participating in the affairs of a savings and loan holding company or any of its non-thrift subsidiaries, without the consent of the Office of Thrift Supervision. Foreign banks and nonbank subsidiaries of a bank holding company are excluded.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of such provisions of the bill and amendment as fall within the jurisdiction of this committee pursuant to clause 1(l) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on Financial Services are shown in the report filed by that committee (Rept. 109–356, Part 1).

○