

# Public Hearing

before

SENATE STATE MANAGEMENT, INVESTMENTS  
AND FINANCIAL INSTITUTIONS COMMITTEE

and

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

"Impact of the 'Riegle-Neal Interstate Banking  
and Branching Efficiency Act of 1994'"

LOCATION: State House  
Room 319  
Trenton, New Jersey

DATE: October 24, 1994  
10:00 a.m.

## MEMBERS OF SENATE COMMITTEE PRESENT:

Senator Peter A. Inverso, Chairman  
Senator John "Jack" Casey  
Senator Bernard F. Kenny, Jr.

## MEMBERS OF ASSEMBLY COMMITTEE PRESENT:

Assemblyman Monroe Jay Lustbader, Chairman  
Assemblyman Christopher "Kip" Bateman  
Assemblyman Steve Corodemus  
Assemblyman Gerald H. Zecker  
Assemblyman Leroy J. Jones, Jr.

## ALSO PRESENT:

Joseph P. Capalbo  
Theodore C. Settle  
Aides to the Committees  
Office of Legislative Services

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PETER INVERSO  
Chairman

DICK LAROSSA  
Vice-Chairman

JOHN P. SCOTT  
JOHN "JACK" CASEY  
BERNARD F. KENNY, JR.

## New Jersey State Legislature

SENATE STATE MANAGEMENT, INVESTMENTS AND  
FINANCIAL INSTITUTIONS COMMITTEE  
LEGISLATIVE OFFICE BUILDING, CN-068  
TRENTON, NJ 08625-0068  
(609) 292-9106

### NOTICE OF PUBLIC HEARING

The Senate State Management, Investments and Financial Institutions Committee and the Assembly Financial Institutions Committee will jointly hold a hearing on the impact of the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994," Pub.L.103-328, on future banking practices in this State.

The joint hearing will be held on **Monday, October 24, 1994 at 10:00 AM in Room 319 of the State House, Trenton, New Jersey.**

Of special concern to the committees will be testimony concerning opt-in and opt-out provisions of the federal law relating to: interstate mergers and acquisitions of a bank or a branch and subsequent consolidation and expansion; de novo entry of out-of-State banks; foreign bank entry into the State through merger, acquisition or de novo; the differential impact, if any, on federal versus State chartered banks; and taxation of branch banks.

*The public may address comments and questions to Joseph P. Capalbo, Committee Aide, Senate State Management, Investments and Financial Institutions Committee, (609) 292-9106 or Theodore C. Settle, Committee Aide, Assembly Financial Institutions Committee, (609) 984-0445. Persons wishing to testify are asked to call Lynn G. Rogers, secretary, at (609) 292-9106 or Arlene Bezek, secretary, at (609) 984-0445 in order to sign up. Those persons presenting written testimony should provide 15 copies on the day of the hearing.*

A copy of the federal law and a summary of its main provisions are available upon request.

Issued 10/17/94

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MONROE JAY LUSTBADER  
Chairman

CHRISTOPHER "KIP" BATEMAN  
Vice-Chairman

HAROLD L. COLBURN, JR.  
STEVE CORODEMUS  
GERALD H. ZECKER  
WILLIE B. BROWN  
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**New Jersey State Legislature**  
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Issued 10/11/94

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**SENATOR PETER A. INVERSO (Co-Chairman):** We'd like to welcome you all to the joint public hearing of the Senate and Assembly Committees who have banking and financial institutions as one of their primary responsibilities and concerns. Before I make some brief comments, Chairman Lustbader has some rules of the game he would like us to observe.

**ASSEMBLYMAN MONROE JAY LUSTBADER (Co-Chairman):** Thank you, Senator.

With regard to the format of this hearing, speakers are requested to limit their remarks to no longer than 10 minutes. What we are trying to do is to give everybody an opportunity to make their remarks. If you feel that you need to make additional remarks, or if you feel that whatever has been said is somewhat repetitive, you are welcome, on a cumulative basis to submit your position in writing.

**SENATOR INVERSO:** Very well. I'll start.

Good morning, again. Chairman Lustbader and I would like to welcome Commissioner Randall and her staff and all of you here as we begin the first discussion on what is and will be a major development in the banking industry.

We are here to assess the impact of recent Federal banking legislation on the State of New Jersey and to craft a sound response to it. The Interstate Banking and Branching Act holds great promise not only for our financial institutions but also for those of us in the Legislature and beyond who have sought to remove the hurdles to job creation. Over the past decade our nation's historic reluctance to permit the growth of banks beyond state borders has given way to the realities of the international marketplace. The Federal law signed last month will further erode the barriers that have stalled the growth of our financial institutions and which have prevented the stronger ones from lending stability to the weaker ones during economic downturns.

In New Jersey, we have seen how the troubles in some sectors of our economy can creep into our financial community and how our banks, in turn, can be limited in their ability to lead the State into better times. The expansion of interstate banking has the potential to eliminate, or at least limit, these problems. Bringing greater access and competition to the banking industry will also prepare New Jersey to take part in the growing competition in international financial markets.

But there are important questions for consumers, as well. We must ensure that those who have traditionally been least able to have access to credit are protected in this new era. Competition should mean greater choice and better service for customers, not an abandonment of local community needs.

We in the Legislature have already heard Commissioner Randall's call for a more aggressive approach to handling consumer complaints, and we look forward to working with the administration to ensure that the legislation that boosts competition includes vital consumer protections.

I'm aware that the administration would like to see interstate banking legislation in place within a year, so that New Jersey is ready when the Federal law takes effect. We are pleased that this discussion is taking place now, so early in the process, and I know that we will do our best to craft the best legislation possible to ensure both the interests of the State of New Jersey, the opportunity for economic stimulation, and also to recognize that the consumers of this State have a great deal at stake in this process.

We thank you very much for listening.

ASSEMBLYMAN LUSTBADER: Thank you, Senator Inverso.

I just have a few brief introductory remarks. I agree with you that if New Jersey's banking industry is to flourish it must be able to grow and meet out-of-state and foreign competition. I think we have some very important questions that will be addressed during the course of this hearing and also in

two committee hearings that I am sure will be held -- at least two more, one in the Senate and one in the Assembly.

But the important questions, of course, have been stated by the Senator: Should the foreign banks be allowed to enter New Jersey; must out-of-state banks continue to buy New Jersey branches in order to operate here, or can they enter de novo. We in New Jersey cannot afford, in my opinion, to hang back in the face of an aggressive banking industry in our neighboring mid-Atlantic states. New Jersey's banking industry must be taken out of the shadow of some of our neighboring mid-Atlantic states, particularly New York and Pennsylvania. We must give--

I think New Jersey is ready. I think the banking industry is ready, and I think the legislation that we need must be put into effect. Of course, we must keep in mind that the citizens of this State must be served well in the course of this sea change of dramatic legislation.

With that, I'll introduce Commissioner Randall for some remarks.

**COMMISSIONER ELIZABETH E. RANDALL:**  
Thank you very much, Chairman Inverso and Chairman Lustbader. I appreciate the chance to be here this morning. And distinguished Senate and Assembly members of the Financial Institutions Committee, I thank you for the opportunity to be here.

I also want to congratulate you for holding this very important hearing only one month after President Clinton signed the Banking Efficiency Act of 1994 into law. This is a new Federal law, and it alters 150 years of the United States' banking policy. There are two very important components of the new law, both interstate banking and interstate branching.

First, on the banking side, the law changes the Bank Holding Company Act to allow adequately capitalized and adequately managed bank holding companies to acquire banks in

other states. One year after enactment, the bank holding companies may acquire or establish a bank anywhere in the country, regardless of state law. This particular provision of the law does not affect New Jersey, since interstate banking already exists for New Jersey in the form of our bank holding companies.

Another provision of the banking section of the new law, however, allows banks within bank holding companies to act as agents for each other: receiving deposits, renewing time deposits, accepting payments, and closing and servicing loans. These are important services which now will inure to the benefit of consumers. This provision will, indeed, affect our banking practices right here in New Jersey. Currently, banks within the same bank holding company are prohibited from servicing each others' customers. As you know, for example, the Chemical Bank of Manhattan cannot accept a deposit from a customer who has his or her account with the Chemical Bank here, of Jersey City.

The Banking Efficiency Act of 1994 eliminates these barriers and in so doing reduces red tape for institutions and provides consumers with new found conveniences. I trust this will be of great benefit to our many residents who live and work within our borders and travel to New York or Pennsylvania, for example.

The second component of the Banking Efficiency Act of 1994 is the branching aspect of the law. Unlike the banking component, states must decide whether or not to participate in this particular new avenue offered by the law. Each state has until June 1, 1997 to either opt in or opt out of interstate branching. States which choose to opt out will prohibit interstate branching for both state and national banks into and out of their borders. States may act well before the 1997 deadline to allow interstate branching for both state and national banks.

It is the position of the Governor and the Department of Banking that New Jersey should, indeed, pursue interstate branching aggressively. By opting in before the 1997 deadline, we will send a clear message that, as the Governor has so often said, "New Jersey is open for business."

Our proximity to Wall Street, our educated workforce, our fiber optics network, just to name a few, all make New Jersey an ideal location for banks to locate their headquarters or their branches. By not opting in or opting in late in the game, New Jersey could well be squandering a valuable economic opportunity.

I'll note in passing that also, by that 1997 deadline, regardless of what all the states do, banks will be permitted to have but one national headquarters in this country. Of course, I'm sure you would agree with me that we would like to see some of those national headquarters right here in New Jersey.

Assuming you and your colleagues in the Legislature decide New Jersey should opt in, there are numerous issues that the opt in legislation is going to have to address. I would like to briefly outline some of my views with respect to those key issues.

First, New Jersey is going to have to decide through what mechanism interstate branching will occur. For example, as mentioned by Chairman Lustbader, will banks be allowed to branch de novo, or will they be required to buy either an existing bank or bank branch. This is an important issue and may well be one of the most serious issues that emerges from the interstate debate. In fact, some of the speakers here today may well testify for or against allowing de novo entry. However, I believe the issue needs thorough examination and the de novo option should be put on the table before you.

Second, the Federal bill sets concentration limits of 10 percent of insured deposits nationwide and 30 percent of insured deposits within any given state. States have the option

to waive this 30 percent limitation. However, I would argue that the New Jersey law should not repeal what is our current 30 percent cap so as to maintain sufficient competitive opportunities for all banks in this State.

Third, the Federal bill pertains solely to commercial banks. It does not address savings banks and savings and loan associations because Federal savings banks and Federal S&Ls are currently permitted to branch interstate, so the Federal bill left these particular institutions out. However, this puts our State chartered savings banks and State chartered S&Ls at a disadvantage. Hence, you would not be surprised to hear that there are some of our State chartered institutions considering flipping or changing their charters to the Federal system so as to be able to take advantage of the interstate branching option.

I believe it is appropriate for New Jersey's new opt in legislation to authorize State chartered savings banks and S&Ls to branch interstate.

Finally, the interstate banking bill will affect other statutes and laws that you currently have on the books. Beyond branching laws which must be enacted or amended, other statutes should also be reviewed to determine the effect interstate branching will have on them. For example, GUDPA, which is what we affectionately abbreviate the Governmental Units Deposit Protection Act as, regulates the deposits that local public entities may make into our depositories. That law currently indicates that it applies only to banks that are "located in this State." Should an out-of-state which branches here be allowed to accept deposits from New Jersey's municipalities, for example. That is a question which I think deserves further exploration.

Finally, before I conclude, I'd like to address the issue of consumer protection, generally, and the Community Reinvestment Act. I was very pleased that Congress recognized in the new Federal law the importance of a state's ability to

regulate consumer protection not only with respect to our State chartered institutions but also with respect to federally chartered depositories. There is, I will tell you in passing, a significant question as to whether or not we can actually achieve enforcement authority over federally chartered institutions. That is usually left to the Office of the Comptroller of the Currency. Nonetheless, the conference report recognizes the importance of our ability to make those laws and have them be deemed applicable through whatever enforcement mechanism to all depositories, be they state or federally chartered.

Moreover, in the congressional conference report, the conferees cited New Jersey's low-cost checking account law as just an example of a consumer protection statute that should not be preempted but be allowed to be in full force and effect.

The Banking Efficiency Act of 1994 also requires the Federal Reserve, for each of several years following enactment, to survey the retail banking institutions in order to determine what services are offered at what price in the retail market. Specifically, the Federal Reserve has been directed to gather data on fees imposed for things like insufficient funds, deposit items returned, and ATM transactions. The Fed must provide an annual report to Congress on their findings.

In addition to consumer protection, the interstate bill also has specific provisions to ensure that deposits taken in New Jersey will be invested here. First, the law requires a separate CRA -- Community Reinvestment Act -- evaluation for each state in which an interstate bank has a branch. In other words, a new institution cannot come into New Jersey for the first time, open but a single branch, and simply take those deposits and export them without reinvesting them in this State.

In addition, the Act directs Federal regulators to set guidelines for ensuring the branches operated by out-of-state

banks are helping to meet the credit needs of the communities in New Jersey which that branch serves.

The Office of the Comptroller of the Currency recently proposed revised CRA regulations which strengthen the current CRA reporting requirements. As a regulator, I put tremendous emphasis on the CRA mandate and its ratings. They guide my decisions on applications for expansion and merger; therefore, it is of the utmost importance that interstate banking and branching and all of its new laws in the states that emanate therefrom shall not in any way, shape, or form dilute the CRA laws.

Again, Mr. Chairman and members of the Committee, I thank you very much for the opportunity to be here, and I look forward to hearing what others have to say on this very important issue today.

SENATOR INVERSO: Thank you.

ASSEMBLYMAN LUSTBADER: Thank you.

SENATOR INVERSO: Commissioner, I have a question. Are you going to defer any recommendation on de novo branching until the hearings are conducted?

COMMISSIONER RANDALL: I would like to hear what both members from the industry, business at large, and the public have to say about that issue, yes.

SENATOR INVERSO: Okay, thank you.

Any questions from the Committees?

ASSEMBLYMAN ZECKER: Just a statement. They made me go for coffee so I wouldn't ask any embarrassing questions, but I'm going to read everything you've said. (laughter)

ASSEMBLYMAN LUSTBADER: Commissioner, do you have a position which you would like to state about foreign banking?

COMMISSIONER RANDALL: With regard to the foreign banking issue, I think some of the detailed analysis may show that there are antidiscrimination clauses in the Federal law which would appear to protect the entry of foreign banks to a

certain extent. In other words, it's not going to be possible for a state to discriminate unfairly against a foreign bank that may want to apply for entry. So I think, again, there are some areas which require a lot of legal analysis because the Federal bill, as extensive as it is, is silent on some points, but also has some general nondiscriminatory clauses in it which I think may well affect the foreign bank entry.

ASSEMBLYMAN LUSTBADER: I take it that you want to wait and see what happens on that, or is that a little too general?

COMMISSIONER RANDALL: I think, Mr. Chairman, what I would hope to see come out of this is an analysis of what would happen if our doors were fully open to all, including potentially, banks which I call not foreign in a sense of coming from another state but foreign in a sense of coming from overseas. For example, I think that there should be some discussion most definitely of why it could be beneficial for the State of New Jersey to entertain an application for, say, a bank from let us say-- The Bank of Thailand, for example, has never done business, hypothetically, in this country. Well, if that bank wanted to come to this country for the first time ever and chose to come to New Jersey, I think we should look at what the possible merits of such an application would be.

ASSEMBLYMAN LUSTBADER: Thank you.

SENATOR INVERSO: Thank you. We appreciate it.

COMMISSIONER RANDALL: Thank you.

SENATOR INVERSO: If there are no other questions or comments, thank you, Commissioner.

ASSEMBLYMAN CORODEMUS: Mr. Chairman?

SENATOR INVERSO: Oh, I'm sorry.

ASSEMBLYMAN CORODEMUS: Just one question, Commissioner, concerning the CRA. I'm not totally versed in all the intricacies of this Federal bill, but should there be foreign banks coming into New Jersey through merger, new

acquisition, or otherwise, is the CRA requirement as it presently exists going to be mirrored with a new banking entity as they come in? Is there exactly the same requirement, or is there something different?

COMMISSIONER RANDALL: There should be a way in which to guarantee that the CRA mandates do apply to any new foreign institutions that choose to come in and do business here, so that I would argue that that should be a condition that is validly placed upon any institution that wants to come in and do business here, so that we know that all of the requirements are, essentially, the same. Because it is a very, very important philosophical mandate which I think is universally supported, and to have it apply to some institutions and not others, I do think would be to lose sight of our commitment to that mandate.

So, however the language could be crafted, I think it would be very important to note that the Federal CRA law would have to apply to any foreign entity coming into this State to do business.

ASSEMBLYMAN CORODEMUS: If I may, through the Chair, the crafting of that law would be done by this State or by Congress?

COMMISSIONER RANDALL: To the extent that any State law we have directly speaks to allowing foreign banks to enter in here to do business, I would think we should have just some language which, by reference, reaffirms that the Federal law applies to those institutions here. I think, again, a legal analysis might show that Congress may have already ensured that the CRA mandate will apply to any foreign bank that comes in to do business here.

ASSEMBLYMAN CORODEMUS: Just my last point: I'm new to the Committee. If you have any information in your office about the actual effectiveness of CRA, I would appreciate you sharing that with me.

COMMISSIONER RANDALL: Indeed, there is a wealth of information on that subject, Assemblyman, and we would be pleased to send you an overview of our data here in this State.

ASSEMBLYMAN CORODEMUS: Thank you.

SENATOR INVERSO: Senator Kenny has a question.

SENATOR KENNY: Thank you, Mr. Chairman.

Good morning, Commissioner. It's nice to see you.

COMMISSIONER RANDALL: Good morning.

SENATOR KENNY: This is an issue of first impression for me. Over the last week or so, I've been aware that we are having this meeting, but I'm really not familiar with it. But it's clearly something that we all have to be very concerned about, the major ramifications in the banking industry in the State.

I first would like to know, what is going to be the procedure as to how we proceed not just today but in the future? Are we going to have legislation, correct, on a State level?

SENATOR INVERSO: Right.

SENATOR KENNY: And there will be future hearings around that legislation; is that correct?

SENATOR INVERSO: Exactly.

SENATOR KENNY: And what about--

ASSEMBLYMAN LUSTBADER: In both the Assembly and the Senate.

SENATOR KENNY: The Assembly and the Senate. What about the Department? Will you be having hearings yourself over these issues -- public hearings?

COMMISSIONER RANDALL: At the moment I had not planned to work independent of the legislative branch, because I recognize the tracking of this is within your prerogative. However, I would be pleased to reappear at any time and work closely with staff in terms of what I deem to be the critical elements you would want to address in any opt in legislation.

Again, I think-- Obviously, you have no bill before you because this is a new issue, and there is no model legislation, necessarily. But I think if we worked, perhaps jointly, it may be, perhaps, more efficient because I have information, but ultimately I must share all that information with you. So perhaps it would be more expedient if I appeared at all of your hearings, rather than conducting independent ones.

SENATOR KENNY: Well, I think probably a concern of all of us here is that consumer groups, customers, bank customers that traditionally go to the small banks in New Jersey that their position is protected. What would be the impact of this type of evolution on customers and their ability to be serviced, etc? That is going to be a very important concern that we have.

Are the consumer groups, small businesses, they're going to be brought into this process -- through the legislative process. But I note where the departments, under Governor Whitman, do go around and have hearings in the State, and I think I just would urge that you have special hearings set up for this specific purpose. I think it might be useful.

COMMISSIONER RANDALL: I certainly see the advantage of doing that, because if there are groups that perceive that we're in a position to hold those hearings and really frame all the information for you, it could be most beneficial, so we may well, at your urging, decide to have one or more hearings to gain what I guess is important input from the public at large.

SENATOR KENNY: Right.

COMMISSIONER RANDALL: I'd be pleased to pursue those.

SENATOR KENNY: Thank you.

ASSEMBLYMAN LUSTBADER: Senator Kenny, I just wanted to add that it certainly would behoove the two Committees to broaden this as much as possible, either jointly with the Commissioner or separately. But I agree with you, we have to

get into this. And we're not going to, in any way, deprive the public of a maximum amount of input because of the dramatic changes that are in the offing here.

SENATOR INVERSO: I don't think anyone intends this to be the only hearing that is conducted. We thought we wanted, as I said earlier, to give a start to the process. We thought it was more efficient to have a joint hearing with the Department, and we should, after this hearing, take stock as to where we're going with the next step in the process.

SENATOR KENNY: I commend both Chairmen for joining this now, because last Thursday, I think, was the first time that I really looked at it. I can see where it is a major, major economic and banking issue. I'm glad that we're starting now, and I look forward to going along and taking our time on this. Thank you.

SENATOR INVERSO: Good, thank you.

Anything else?

SENATOR CASEY: Mr. Chairman?

SENATOR INVERSO: Yes.

SENATOR CASEY: I'm very happy to read in your statement it's the position of the Governor and the Department of Banking that New Jersey pursue. I guess what you're looking for now is the way we should pursue it, and I think you're saying to me, we should be very careful with foreign banks or anything else the Legislature would pass. Is that more or less, what I got from you?

COMMISSIONER RANDALL: Right. On the fundamental issue, Senator, of whether or not to take advantage of this opportunity, I unequivocally feel that we should, and I urge you to do that. As to the specifics, we do have some very important choices as to what our State legislation should look like. As we go forward, I will share with you that I will be monitoring very closely what our neighboring states do, because as a region, I think there is something to be said for us appearing

to be attractive as a region, as well as as a state. So I will be coordinating closely-- At the end of this month, I will be visiting with the Northeast banking commissioners. We have a meeting set up, and I think it's important for you to hear, as well, from me what our neighboring states are doing with regard to the choices they face, as we do.

SENATOR CASEY: Well, I think it's very important what you said, that we continue communication between Banking and this Committee, because as you see, there are people here talking today that we don't see too much of -- consumers and so forth and so on. So I agree with you, as long as there is constant contact, and this bill is not really pushed through too fast, you have my full support. I also believe that banking in New Jersey should be changed.

So I'm saying, as long as we communicate and go to the taxpayers, because we are changing the law-- It's not just for banks. We are changing the Federal laws and whatever we have to supersede, so it's very important that we're -- that we can know what each other are both thinking.

So I'm saying I agree with you as long as we continue to have hearings, and you admitted that you will come back to some of these hearings. I think that's a wonderful idea, so we can keep communication between the two groups.

COMMISSIONER RANDALL: Thank you.

ASSEMBLYMAN LUSTBADER: Assemblyman Jones?

ASSEMBLYMAN JONES: Thank you, Mr. Chairman.

Good morning, Commissioner.

COMMISSIONER RANDALL: Good morning.

ASSEMBLYMAN JONES: Let me just say that most of what you read in your opening statement I would tend to agree with. However, as Senators Kenny and Casey have indicated, I think there is, as we move forward exploring the notion of interstate banking, I think we perhaps need to be very cautious as we craft other legislation that is appropriate for New Jersey,

particularly when we talk about consumer protection, the impact of CRAs, and other issues such as de novo branching, as it will impact New Jersey and its ability to compete with neighboring states and states throughout the nation.

What I would really like to focus on just right now-- As part of your comments you had indicated that the Federal bill pertains solely to commercial banks, and it does not address savings banks and savings and loan associations because Federal savings banks and savings and loan associations are currently permitted to branch interstate, notwithstanding state law to the contrary. However, it puts savings banks and savings and loans at a disadvantage from a competitive standpoint. As you indicated, it would probably force a lot of savings banks and savings and loans to begin to flip their charter such that it would be a Federal charter, and they can branch on an interstate basis and be more competitive.

However, as we know savings and loans today in New Jersey, this would suggest that we would be moving those savings and loans to a point of extinction, much like Jurassic Park and its dinosaurs. I'd like to just talk a little bit about what the Commissioner's position is relative to this erosion of our savings and loan associations as we know them today, particularly when they constitute approximately \$13 million of \$96 million in deposits throughout the State. That obviously represents a bit more than 10 percent of the total deposits that are on hand within the whole structure of banking. But it does represent, in my mind, a significant portion, and it is also a very integral part of an industry that was, at some time ago, a bullish industry.

COMMISSIONER RANDALL: Yes, if I may address your question, Assemblyman. I agree that the savings and loan industry in New Jersey went through some very, very difficult times. The good news I can report is that our S&L industry in this State is on the mend. Much like the commercial banks, the

savings and loans, be they Federal savings and loans or State savings and loans, here in New Jersey have started to do very well. And of course, you've read about some of the profits that our commercial banks have started to realize once again.

But very importantly, those S&Ls have started to realize some of those profits. Now, there are fewer of them because of the number of failures that we had. But the good news, as I said, that those that have remained after the failures are in good financial shape.

I'm pleased to report that the Resolution Trust Corporation, which oversaw the management and selling off of the failed savings and loans, will hopefully be divesting itself of the last failed S&L in this State -- the Carteret institution -- as soon as that auction can take place. The bidding was so intense that the auction had to be postponed at one point. So there were a lot of healthy, anxious institutions ready to acquire.

In fact, I was up in Bergen County -- the Governor recently attended a ribbon cutting ceremony last week. City National Bank of Newark acquired a branch of a failed S&L. So the acquisitions are moving into healthy institutions, and we will soon have all of our failed savings and loans off the books and back healthy again.

So I would have to say that I'm very interested in seeing the State S&Ls continue to prosper and flourish. Hopefully a change you will make in the State law will allow the State chartered S&Ls to have this same new interstate authority as everyone else. I think that will continue to ensure that they remain healthy, because they are a very important industry in this State.

ASSEMBLYMAN JONES: And that is your recommendation?

COMMISSIONER RANDALL: It is, indeed. Yes.

ASSEMBLYMAN JONES: Thank you.

COMMISSIONER RANDALL: Thank you.

SENATOR INVERSO: Is there anything else? (no response)

Thank you, Commissioner.

COMMISSIONER RANDALL: Thank you.

SENATOR INVERSO: We look forward to continuing this dialogue with you as we go forward.

COMMISSIONER RANDALL: I do, too.

SENATOR INVERSO: Obviously, it's not going to be accomplished in one day. Some of the Senators have expressed, and some of the Assemblypeople, we have got to get a lot of input to do with this. There are a lot of nuances to this legislation that need to be addressed.

We have other questions, but I think we'll wait to hear from the individuals who want to testify today. Then, what we'll do is consolidate and sift through what information they've given us and thoughts for consideration, and then sit down with your Department and see what we can do, and then whether another hearing-- And probably another one would be appropriate. Once the exposure that this hearing gets, I'm sure there will be other interested groups, particularly on the consumer side, that may come forward.

Thank you for coming out today. We look forward to ultimately developing legislation that achieves what we all want to achieve in terms of efficiency, competition, and safeguards.

COMMISSIONER RANDALL: Thank you, again.

ASSEMBLYMAN LUSTBADER: Our next witness is Alfred Griffith.

**A L F R E D   H.   G R I F F I T H, C.A.E.:** Good morning.

ASSEMBLYMAN LUSTBADER: Al, for the record, would you state your association, please.

MR. GRIFFITH: Yes. Alfred Griffith, of the New Jersey Bankers Association. I have given to you 16 pages of testimony, which I won't read to you, heaven forbid.

NOTE: The remainder of Mr. Griffith's testimony was untranscribable due to an electrical malfunction in Room 319 of the State House. Please refer to Appendix Material at page 12x to find the written statement Mr. Griffith supplied to the Committees.

MR. GRIFFITH: I've said too much. I thank you for the opportunity, and I'll now be ready to answer any questions you might ask.

ASSEMBLYMAN LUSTBADER: Al, you touched on something which is an issue which I think is important, and that would be, I think it is important that our legislation put New Jersey on an equal footing. Because if it doesn't put it on an equal footing with out-of-state banks and any other, for instance foreign banks, I think economic policy in New Jersey could suffer.

To go back to the issues of consumer-related concerns, I think we have to be in a position where our economic policy has to be at least as good or stronger than the people who are going to do business in this State who may not feel as we do, on a regional basis, or perhaps, their background from other parts of the country, they may not agree with what our economic policy is. So I think it is important that we stand on an equal footing, and I appreciate the fact that you did bring that issue up.

MR. GRIFFITH: Mr. Chairman, you're absolutely right. There are consumer protection elements within the Federal law that the states must look at and abide by. Our concern is that if the Legislature goes overboard in this area, and other states (portion of testimony lost due to electrical malfunction)

SENATOR INVERSO: So therefore, if we preclude de novo branching in our State, it does preclude banks in our State from establishing de novo branches in other states, as I understand it at this point in time.

MR. GRIFFITH: I don't have an answer to that one, Senator.

SENATOR INVERSO: Well, all I'm saying is that that's a consideration. That may be a desirable element, I don't know. But we have to bear in mind that the balance is provided for in the legislation by permitting us to do certain things, but also have the commissions of other states permit that also. So we may be closing the reciprocity aspect by doing that.

Again, it may be desirable, because we have to certainly look here first and make sure that we do everything that continues to support our banking system and not weakening it in any way. And yet, there are advantages I see to certainly some of the things that the legislation provides for that you have indicated you might not be supportive of right now.

With regard to the foreign bank situation, how do we stop another NatWest?

MR. GRIFFITH: That was a loophole in our interstate law when it was enacted back in '86. I know our organization worked on that legislation for four or five years. The administration looked carefully at it.

SENATOR INVERSO: Isn't the loophole still there?

MR. GRIFFITH: It's there. I assume that probably no one else wanted to exercise it because of the uncertainty as to what action might be taken by the State had that been made.

None of us ever intended that the bank that did the acquisition -- no one ever thought that we should be looking to its parent and that the parent would be abroad.

The rest (portion of testimony lost due to electrical malfunction)

--by '97 would also be applicable to branching. That's an issue we're looking at right now.

SENATOR INVERSO: Okay, good. Keep us apprised of what you uncover on that.

MR. GRIFFITH: We sure will.

**New Jersey State Library**

SENATOR INVERSO: Any questions? Senator Kenny?

SENATOR KENNY: Thank you, Mr. Griffith. I would like to, both from the Committee and from yourself, have us supplied with those variables which the states are going to have to look at to decide what position they are going to take. You know, that would be very helpful.

As I understand it, all 50 states now have a certain period of time to pass their individual legislation, and I guess it will come down to "x" number of issues that each state is going to have to look at, right?

MR. GRIFFITH: Absolutely.

SENATOR KENNY: It would be helpful to know what those issues are and to have them set forth so that we can know, and it also would be helpful to monitor, as the Chairman said, the positions of other states, especially in the region as to know where they are going, so we can make a good judgment.

On the issue of taxation, the State of New Jersey's ability to tax banks and holding companies, will that be affected by this legislation?

MR. GRIFFITH: No, we don't believe it will. The applicability of the-- You know at this (portion of testimony lost due to electrical malfunction)

ASSEMBLYMAN LUSTBADER: Gentlemen, who chooses to start?

**G E O R G E   J .   S O L T Y S , JR:** Thank you. I'm George Soltys from United Jersey Bank. My responsibilities include strategic planning and mergers and acquisitions. I appreciate the opportunity to express the thoughts of United Jersey Bank regarding the impact of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

We believe the options available to the State of New Jersey under this Act deserve careful deliberation, as these decisions will have a major impact upon the future of the New Jersey banking industry.

First, a little background on United Jersey Bank. We are the largest subsidiary of UJB Financial, a \$15.5 billion asset bank holding company. UJB has over 5400 employees in New Jersey, representing an annual payroll of approximately \$154 million.

United Jersey Bank is New Jersey's largest state chartered bank. Our bank accounts for over 35 percent of the total deposits in all of New Jersey's state chartered commercial banks. We operate 197 full service bank branches spread across nearly all areas of the State. UJB also has 72 banking offices in Pennsylvania.

My testimony will focus on one aspect of the Act, de novo entry by out-of-state banks. As you know, the Act treats interstate de novo branching separately from interstate mergers and acquisitions of branches. Our State has the option whether to permit out-of-state banks to establish de novo branches in New Jersey.

We oppose de novo branching entry by out-of-state banks. To explain our position, I'd like to begin with a few key facts. There are 3735 branches of banks, thrifts, and credit unions in New Jersey. This equates to 0.5 branches to every square mile or five branches for every ten square miles. This is by far the highest ratio among the 50 states. We have five branches per ten square miles. The next highest ratio is three branches per ten square miles, which is the ratio for Connecticut, Massachusetts, or Rhode Island. We may not quite have a bank on every corner in this State, but it would be difficult to argue that we are underbanked in New Jersey.

The situation is similar in terms of branches per household. There are 1.3 branches per 1000 households in our State. This ranks 10th highest among the 50 states. In contrast, New York is 42nd, and California is 45th. So, clearly, banking competition is already intense in New Jersey without de novo branching from out-of-state banks.

We believe that de novo interstate branching has the real potential to diminish the franchise value of the existing New Jersey banks. This would adversely affect the banks, their employees and their stockholders.

The banks who currently operate in this State have invested substantial capital to build up their customer franchises and profitability. They have also invested large amounts of human and monetary capital to support their local communities.

We believe that others entering our State should also make a strong commitment by purchasing existing whole banks or branch networks. For example, if de novo entry is allowed, it is conceivable that an out-of-state institution could set up a network of leased banking stores at a relatively low cost. If that doesn't work out, they could pull out in a few years when the leases run out. We feel that the requirement to make a significant investment fosters stability in our State's banking industry and commitment to our communities.

Another aspect which should be considered is the potential effect upon the chartering of new banks. It is my observation that in the past, de novo chartering has been most active during periods when the local economy was healthy, banking profits were strong, and banking consolidation was taking place.

These conditions seem to be coming together again to form a favorable atmosphere for local investors to form new community banks. Many of the de novo banks formed in the 1980s have grown and prospered to become an important part of our State's banking industry.

However, I would expect the attractiveness of forming a newly chartered bank to be substantially diminished if out-of-state banks are allowed de novo entry into New Jersey.

As was mentioned a few minutes ago, we recognize that if New Jersey does not allow de novo entry, it could possibly

preclude New Jersey banks from similarly opening branches in other states where they do not already have a presence. However, we think the negative aspects of de novo entry far outweigh the possible value of branching into other states.

In summary, we believe that a healthy competitive atmosphere exists today and can be maintained in the future without the need for de novo entry by out-of-state banks.

Now my colleague, Rick Ober, will respond to the Committee's concerns regarding the differential impact of Federal versus State chartered banks.

**R I C H A R D F. O B E R, JR. ESQ.:** Thank you, George.

Good morning, Senators and Assemblypersons. Thank you for the opportunity to testify today. My name is Rick Ober, and I have been General Counsel at United Jersey Banks for the last 19 years. In that time, I have seen enormous changes in the banking industry in New Jersey. I believe that we have reached a watershed, a critical juncture in banking in New Jersey.

My purpose is to speak about the differential impact of the Interstate Banking Act on nationally chartered versus New Jersey state chartered banks from the perspective, as George mentioned, of New Jersey's largest state chartered bank.

We haven't had the great success in making the New Jersey state charter attractive. According to the New Jersey Commissioner of Banking's 1993 annual report, state chartered commercial banks held \$27.1 billion in assets, while national banks held \$73.2 billion in assets in New Jersey. So the state chartered banks have approximately 27 percent of the commercial bank assets in New Jersey.

On the other hand, United Jersey made the decision to be a state chartered bank about a year ago, when we announced plans to merge UJB Financial Corp.'s two national banks into its state chartered bank. That merger could have gone either way, but we felt that the advantages of a state charter in terms of

flexibility, local responsiveness and somewhat lower examination costs outweighed that of a national charter, unlike our competitors at First Fidelity, Midlantic, NatWest, CoreStates New Jersey National, and others. This does, however, mean that we are examined by both the Federal Reserve Bank of New York and the New Jersey Department of Banking, while national banks have only the Comptroller of the Currency examiners.

But a new factor has entered the equation, the so-called Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. This Act is seriously prejudicial to state chartered banks and threatens the dual banking system. We were very active in trying to get changes made at the time it was being passed. We were unsuccessful in doing so. I'll try and explain why.

First, there are two definitions to keep in mind, found in Section 101(c) of the Act. The "Home State" of a national bank is defined as the state where the main office of the bank is located, and for a state bank like United Jersey, it's the state by which the bank is chartered, in our case, New Jersey. A "Host State" is a state other than its home state in where a bank maintains or seeks to establish a branch.

Section 102(b) provides that, for a national bank, the laws of the host state regarding community reinvestment, fair lending, and the establishment of intrastate branches will apply to any branch in the host state of an out-of-state national bank, except where preempted by Federal law, and other host state laws will apply to a branch of an out-of-state national bank to the same extent as if it was an in-state national bank.

What this means, from a practical point of view, is that national banks have successfully persuaded the Comptroller of the Currency to preempt virtually every New Jersey banking law which the State has sought to apply to national banks in the past, such as our lifeline checking account law and our home mortgage disclosure law. Your Banking Department staff can

confirm that for you. The situation is really not changed by this new Act. National banks will continue to look principally to the Federal banking laws.

State chartered banks, on the other hand, are hit with a double whammy. The Act states that all the laws of a host state, such as New York, if UJB wanted to branch into New York, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host state of an out-of-state state bank. But of course, since UJB is a New Jersey state chartered bank, New Jersey laws will also apply to that branch. So a state bank branch in another state will be subject to both the laws of its home state and its host state, as well as the Federal banking laws, and, in effect, will have to abide by the most restrictive of the three laws on every point. Instead of one set of laws on every question, a state chartered bank will have three sets of laws.

Hypothetically, if we were to merge our Pennsylvania and New Jersey state chartered banks under the New Jersey charter, the branches in Pennsylvania would have to follow Federal Regulation O, the Pennsylvania law, and the New Jersey law with regard to loans to directors and officers. These laws are similar, but some aspect of each is different enough to make bank lawyers tear out their hair. (laughter)

SENATOR INVERSO: You gave us quite a line there.

MR. OBER: Follicularly challenged is how we refer to it.

For example, in trying to determine whether the insider loan limits apply to a loan to a partnership in which a director is a partner, the Federal regulation includes partnerships in which a director owns 25 percent or more of the voting securities and probably excludes limited partnership interests. The New Jersey law includes any partnership, general or limited, no matter how small the interest of the director

partner, and the Pennsylvania law includes only partnerships where the partner is a general partner.

Now, what can the New Jersey Legislature do to help its state chartered banks and to persuade them and other state chartered banks in neighboring states to choose the New Jersey charter? Do we care whether banks locate in New Jersey? Take a trip to Wilmington. What signs do you see on the banks there: Chase Manhattan, Chemical, Citibank, Morgan, Bank of New York, and lots of others who left New York and other states because of our misguided usury laws. The whole credit card industry in New York City packed up, drove down the New Jersey Turnpike, paid us a few bucks in tolls, crossed into Delaware, and settled down. I'm sure that the Delaware legislators will be happy to tell you about the many new jobs and the prosperity that resulted in Wilmington because of this. What an opportunity lost by New Jersey. What an opportunity lost for New Jersey.

A list of those banks opened by out-of-state financial organizations in Delaware to issue credit cards appears on page 9 of my testimony. As you can see, it's a long list. We would like to have had some of those in New Jersey.

Meanwhile, New Jersey banks like Midlantic and United Jersey sold their credit card businesses to out-of-state organizations. We not only failed to gain jobs, we lost them. Have we protected New Jersey consumers by putting a cap on credit card interest rates for cards issued by New Jersey banks? Look in your wallets. Most of us are paying out-of-state interest rates to out-of-state banks.

When I said we are at a critical juncture, I meant that this is probably the last chance to capture a significant movement of financial institution headquarters, a movement which will take place over the next two and a half years as banking organizations choose their home states. The big banks in this area are not all national banks. Bank of New York, Bankers Trust, Chemical, Marine Midland, Morgan Guaranty, Meridian, and

Wilmington Trust to name a few listed on page 10 are all state chartered banks in their home states. Chemical and Bank of New York, both of whom New Jersey affiliates are national banks, and Meridian, which owns United County Trust -- which I think is the sixth largest state chartered bank in New Jersey -- and CoreStates, First Fidelity, Midlantic, PNC, and NatWest among the national banks already have branches in New Jersey and a neighboring state and will be deciding on or choosing to change their home state under this Interstate Banking Act. To the extent that any of them or UJB wishes to merge its banks in different states into a single state chartered entity, a decision will be made based, in part, on the advice of their lawyers as to which state is the most favorable, provides the most opportunities, and the least burden.

It's this last item, the multistate burden of three that I mentioned a few moments ago, that may be the critical factor. That analysis will be done across the board for the multitude of duplicative and overlapping and burdensome statutes and regulations, starting with the usury laws. There is no legal requirement or other reason to force any organization to choose as its home state a state where it has most of its loans and deposits. A bank could choose as its home state one in which it had a single branch, if that was the least burdensome state.

Assume for a moment -- and you might want to follow on the chart on page 11 -- a bank holding company with banks in New York, New Jersey, Pennsylvania, and Delaware. There is an extensive Federal branch closing law, which requires notices, studies, etc. Assume that New York has its own complex and duplicative branch closing law, with different notice periods and publication rules, New Jersey has a somewhat less burdensome one, and Pennsylvania and Delaware find the Federal law sufficient and do not have additional state laws on the subject. Which state would that holding company choose to be its home

state? On the top chart on page 11, I show that if that banker picked New Jersey, the branches in New Jersey would have Federal and New Jersey law. The branches in New York would have Federal, New York, and New Jersey law to comply with. And the branches in Pennsylvania and Delaware would have Federal and New Jersey law. I think that banker is likely to pick Delaware or Pennsylvania. That way, as shown on the bottom half of the chart, the branches in New York would just have Federal and New York law. The branches in New Jersey would just have Federal and New Jersey law, and the branches in Pennsylvania and Delaware would have only Federal law.

Governor Whitman stated in her campaign that she was opposed to duplicative, overlapping, and sometimes conflicting Federal and state laws. According to the American Banker of Wednesday, October 19 of this year, "New Jersey state banks will not face rules that are more stringent than Federal regulations, the New Jersey Banking Department pledges." Well, I'm here to suggest that the burden of New Jersey banking laws, which overlap, duplicate, and conflict with Federal banking laws is substantial, and the only way we are going to make the New Jersey charter attractive is to get rid of them and rely on enforcing the applicable Federal laws.

Some of these state laws were passed before there were Federal laws on the subject; some were passed before FDICIA subjected all state banks to virtually all Federal banking laws, and a very few may have been passed just to look good to some long-retired legislator's constituents.

The national banks have ignored them, with the Comptroller and Congress's backing. The New Jersey state chartered banks have suffered with the additional costs and delays they produce. New Jersey can no longer afford this overlapping and duplicative regulatory burden. In order to make New Jersey an attractive State, we need to repeal those laws.

I have included in my written testimony summaries of thirteen of those New Jersey laws that should be repealed, together with the parallel Federal laws. I have made one copy of the State and Federal laws but not all the regulations behind them, which I would be happy to deliver to the staff or the Banking Commissioner, as you see fit. Working with the Banking Commissioner, we will find more in the next few months.

The U.S. Congress passed a regulatory relief act, the Riegle Community Development and Regulatory Improvement Act of 1994, at the same time as it passed interstate banking. I call on the New Jersey Legislature to do likewise.

Lest you feel that New Jersey residents will be unprotected if we eliminate some duplicative and redundant State laws, I display for you, in addition to the two maroon volumes of New Jersey laws and regulations applicable to banks, the four blue volumes of the "Federal Reserve Regulatory Service," containing the Federal laws and regulations applicable to our state chartered bank, which provide extensive protection for our residents.

No banker will voluntarily choose among the several state regulatory structures the most burdensome to put in his or her briefcase and carry to branches in another state. Organizations will be merging their banks in multiple states in 1997, or sooner, if New Jersey opts in early, and they will be choosing a home state. Your actions or inactions in the next few months will determine if many, or any banks, choose New Jersey.

Thank you for the opportunity to testify. George and I will be happy to answer any questions that you might have.

SENATOR INVERSO: The only observation I have is, if you laid the gauntlet down -- and Commissioner Randall is sitting here, and I'm sure she'll take the information you have provided for us, and we'll take a close look at it. Whether we can achieve all that, I'm not certain. But certainly, our

hearts are in the right place. Hopefully, our minds and reason--

SENATOR KENNY: I thought you would have more than six books.

ASSEMBLYMAN LUSTBADER: I think you would agree, would you not, gentlemen, that the Federal legislation does, to some extent, wipe away some of the conflicts that you pointed out in those volumes. In other words, if there is a repeal by this Federal legislation -- some of that New Jersey legislation has been repealed. Am I correct on that?

MR. OBER: No, sir.

ASSEMBLYMAN LUSTBADER: None of it?

MR. OBER: No, sir.

ASSEMBLYMAN LUSTBADER: Even by implication?

MR. OBER: It is not my understanding, from reading the Interstate Banking Act or the Regulatory Relief Act, that it has repealed any of these laws, except to the extent they may or may not be applicable to the national banks.

ASSEMBLYMAN LUSTBADER: Well then what you are saying, apparently, is that we have to do a complete overhaul -- if I read you correctly, we have to do a whole overhaul of our existing State banking laws to make sure that we are competitive with other states and other jurisdictions so that we will not be left out.

MR. OBER: To the extent that there are State laws and Federal laws on the same subject, that is exactly my point, sir.

SENATOR INVERSO: It is certainly a dimension we need to look at, because one of the sought after goals of moving quickly on this would be to capture, if you will, headquarter banks here in New Jersey. The dimension that you raise is certainly a factor, I would think, in their decision making and needs to be in ours in terms of the attractiveness of it.

I think we should take a close look at what you have laid down for us. Again, I don't know whether it is all

achievable or not. You know, the State as a whole is looking toward shedding itself of, perhaps not only duplicative -- certainly we shouldn't have that -- but any laws which go well beyond the Federal mandates. That is not always something that can be achieved or should be achieved, but we are looking at them.

That's why I say, I think you have laid the gauntlet down, and we're heading in a direction that, I think, parallels what you have provided for us. So we need to look at that as an element of business attraction or headquarters attraction, in this case.

I just want to comment--

I'm sorry.

MR. OBER: I certainly didn't mean to think of it as a gauntlet.

SENATOR INVERSO: Well, it is.

MR. OBER: As the day with the Commissioner, the first two folks who got up, got up to complain about some very burdensome Federal regulations, and the response of the Governor and the Commissioner was, "Well, that's really not our ballpark." So the people said, "Why don't you go down to Washington and argue." I assure you that we do our best through our lobbying organizations and personally to make points in Washington to the legislators and regulators there. This is the part that is in our ballpark.

SENATOR INVERSO: Right, exactly. Maybe I should have used a different term, but to me it is clear what you want us to do and look at. And I think we should; it needs to be done.

Mr. Soltys, I think you've given us some very good statistical demographic information in terms of the proliferation of New Jersey banking in the State, whether it be on an area basis or on an individual basis. It's something we need to take a look at. I take heed of what you say here relative to your position against de novo branching, and I'm

sure the Committee will weight that and the Commissioner will weight that heavily in making a decision relative to what the legislation should provide for.

ASSEMBLYMAN LUSTBADER: Any questions?

ASSEMBLYMAN CORODEMUS: I have a question of the witnesses, if I may, Mr. Chairman.

You paint a very serious picture of what the future might hold under the Federal legislation. I'm glad to see that you are concerned about maintaining New Jersey employees and consumer opportunities to neighborhood branch banks and such. But under the present situation, when there are, let's say, large commercial transactions in New Jersey, maybe even with United Jersey Bank, that might have other affiliate organizations in Pennsylvania or New Jersey, those large transactions, where does all of the decision-making occur, where do the loans close? Is it in New Jersey if it originates in New Jersey?

Let's say you have a large commercial loan in South Jersey and one in North Jersey that UJB services; the lending originated with you folks. Would they close here in New Jersey or would it close out of state? What happens right now?

MR. OBER: Well, in most cases, these would close in New Jersey because in most cases the customer will be in New Jersey. Our principle lending thrust in the larger corporations is limited to institutions which are either headquartered in New Jersey or have very substantial operations or plants in New Jersey. We're in a service business; the customers' convenience is paramount. So the customer usually dictates where the closing takes place.

Now if the customer, God forbid, has picked a Philadelphia or New Jersey law firm, and they ask that the closing be in their offices--

ASSEMBLYMAN CORODEMUS: I'm sorry. Could you repeat that.

MR. OBER: If the customer has chosen to be represented by a Philadelphia or New Jersey law firm, and they choose to want to have the closing in their offices, then we will go where the customer asks us to go. But that doesn't happen in most cases.

ASSEMBLYMAN CORODEMUS: So, if it goes out of state, it is at the customers' direction. It's not at the bank's direction?

MR. OBER: Yes. And we have banks in New Jersey and Pennsylvania--

ASSEMBLYMAN CORODEMUS: That has not always been my experience. It's been my experience that sometimes loans close -- and not just with your bank, but with other banks -- they not only close in New York, they also close in Philadelphia. So sometimes the lines get blurred with regard to commercial transactions. That's why I asked the question.

ASSEMBLYMAN LUSTBADER: Any other questions.

SENATOR KENNY: Yes.

I'm sorry, go ahead. I'm sorry, Assemblyman, go ahead.

ASSEMBLYMAN JONES: Go ahead, Senator.

SENATOR KENNY: No, after you.

ASSEMBLYMAN JONES: Thank you.

It was, I believe, Mr. Soltys, who mentioned that UJB had currently about 5400 employees. And in an environment where we have seen a lot of -- not just in the banking industry, but other industries -- a series of downsizing, and as we begin to consider the impact of interstate banking, particularly the notion of de novo banking branches, what impact may that have on UJB's corporate direction, and what alterations may have to be realized as a result of a consideration of de novo banking becoming a reality in New Jersey?

MR. SOLTYS: Well, again, I think the potential harm, and this wouldn't just be UJB but all banks in New Jersey, would

be if there could be a large-- You know, I compare it to some of the shopping malls, where sometimes at Christmas time you see a lot of new stores, and then after Christmas, you don't see them any more.

It is a potential, I think, to hurt the employment of the banks who are here today. If other banks were to come in and take away business from some of the smaller community banks, it might force them to close a branch or just maybe to sell out. That, we think, might cut employment.

MR. OBER: On a safety and soundness basis, the first question is: Are there enough banks to serve the populace? The second question is, are there so many banks that a lot of them aren't going to make any profits and some of them are going to have to close? We believe the statistical evidence would indicate that there are enough banks and enough branches in New Jersey to serve the population.

Now, UJB will survive one way or another, whichever way this legislation goes as far as the financial conditions. But if you move a branch of a large out-of-state bank in next door to a small community bank, that it just gets a lease and opens up, then that small community bank is going to suffer increased competition, and in some cases be forced out of business. That is the thing you may have seen in The Trenton Times over the weekend, about the Home Depots coming in and putting the small local hardware stores out of business.

Now, there is a balance to be achieved. Do you want low cost? Do you want adequate competition and opportunities for consumers? But you don't want to give the big players a chance to wipe out the opposition.

ASSEMBLYMAN JONES: Just as a follow-up on the issue of potential branch closures, there was specific mention of within the Federal legislation that in the event of -- that an interstate bank would propose to close any branch in a low- or moderate-income area, the branch closure notice must contain the

mailing address of the bank's Federal regulator, that statements and comments regarding the closure be mailed to that regulator. But if a person from that area, in which the branch is located, submits a written request that includes a statement of specific reasons, and the request is not frivolous, that the agency comes out and consults with the community leaders and convenes a meeting with such leaders, that the deposit institution can explore the feasibility of obtaining adequate and alternative facilities and services. The legislation specifically states that this process shall not affect the authority of that bank to close the branch or the timing of the closing.

That, in essence, is a summation of that aspect of branch closures. But you did comment on branch closures, and I just wanted to-- If you would elaborate a little more as it pertains to that summary that I just read, and the impact, again, on a UJB or, perhaps, other institutions in the State that would be impacted by such a clause.

MR. OBER: Certainly. My point there is that that Federal law exists, and my question is, do we need a State law as well to provide adequate protection for our consumers in this State. The Federal regulators have had a pretty good policy of cooperating with the states. I'm sure they would invite the banking commissioners to participate in any hearings of that nature. I did not include the branch closings among the 13 summaries, because that, in fact, is a State regulation, so that is something the Commissioner can deal with, with the Legislature having dealt with it directly.

My point is that that seems to me to be a full and complete structure for dealing with branch closings. And if we have to deal with a New Jersey law and a Pennsylvania law and a Federal law at the same time, then that will disadvantage us as a state bank, because we'll be trying to-- We'll wind up what I refer to as the lowest common denominator. We'll be dealing with the most restrictive of each state every time we look at a

new issue, whether it's branch closings, director loans, or notice of deposits maturity, or anything like that.

ASSEMBLYMAN JONES: Just a closing comment, Mr. Chairman.

You know that I believe we should certainly pay close attention to, particularly when we speak of the areas that individuals would be amongst the ranks of low- and moderate-income, and the impact that it would obviously have relative to those consumers in that area and their ability to bank. It's a special sensitivity that we all should pay close attention to as we begin to craft the legislation that this State would operate under.

Thank you.

MR. OBER: I can tell you that at United Jersey, because we have just gone through it with respect to one of our acquisitions, branch closings are proposed by the retail staff who look at it particularly on a financial basis, and then they are all reviewed by the Community Reinvestment Officer of our bank to determine whether A) the branch can be made profitable by meetings with community leaders and others to encourage more use, or B) whether the closing of that branch might result in inadequate banking resources in that community. The retail people can't close that branch without the sign-off of the community reinvestment people.

ASSEMBLYMAN JONES: Thank you.

SENATOR INVERSO: Before turning to Senator Kenny, I'd just like to say that while you have articulated very well the need to look at the regulatory burden, it is obvious that there are other things by comparison that banks will look for if they are looking for really a presence, as opposed to just an office presence in a state. I think in that regard, New Jersey has to measure up well. I'm talking about issues such as taxation, workforce, location relative to the proximity to other financial markets, the quality of life issue. There are a number of

criteria I think one will evaluate if they truly want to have a presence here in New Jersey. While the regulatory burden -- and I don't mean to minimize or diminish what you have indicated -- but I think we're setting the tone that that may be a principle reason why New Jersey might not fair well competitively.

I think that is an issue that needs to be addressed, and as I said, we're trending in that direction. But I think all the other elements I've raised, and some I probably haven't raised go into the matrix of what is a climate that is conducive for the attraction and retention of, in this case, financial headquarters and financial operations.

So I think we have to work together to make sure the overall ambience is right, as opposed to not only the regulatory issues.

MR. OBER: There is no question that a significant tax differential could probably override this issue. I didn't mean to paint, if I did, the picture of New Jersey as being the most difficult. Although I haven't practiced in there, my perception is that our neighbor immediately to the north has this problem even more severely than we do, while the ones to the south and the west have less so. The Delaware example, from the credit cards, I wouldn't like to see that come true again, because I don't want to move to Wilmington.

ASSEMBLYMAN LUSTBADER: My own sense is that the bottom line of this legislation, if properly crafted in conjunction with the Federal enabling legislation, will produce competition that will result in more jobs than less jobs, as I see it, because banks -- the industry -- will be entitled to grow to meet challenges both out of this State and in this State and do it from New Jersey.

So I think that obviously we have to find out how this is going to all play out, but I don't see this Federal legislation as self-limiting in terms of jobs. I see it as an

opportunity to expand our banking industry, and therefore, our job market.

But thank you, gentlemen.

SENATOR INVERSO: Senator Kenny?

ASSEMBLYMAN LUSTBADER: Oh, I'm sorry.

SENATOR KENNY: No, thanks. I'm sorry.

MR. OBER: I would agree with you, but as Al Griffith said, it is a zero-sum game in terms of where the banks headquarter. There will be a lot fewer headquarters when these banks all merge together.

SENATOR INVERSO: Thank you, gentlemen.

ASSEMBLYMAN LUSTBADER: Our next witness is Phyllis Salowe-Kaye.

**P H Y L L I S   S A L O W E - K A Y E:** My name is Phyllis Salowe-Kaye. I'm not a banker; I'm not a lawyer. I'm the Executive Director of New Jersey Citizen Action, New Jersey's largest consumer coalition. I have submitted testimony. It's only four pages. It can't compete with the nineteen pages.

But before I go to my testimony, I'd like to tell the story of my 1969 green Malibu Chevrolet car. The bankers who are here today who have met me before have heard this story, so I ask you to bear with me. I know that the Committee members haven't, but I think it gives you a clear picture of where New Jersey Citizen Action and where Phyllis Salowe-Kaye come in on the issue of banking.

In 1969 I graduated from Boston University. I had a contract to teach in Newark. I lived in Bradley Beach, a town where there was only one bank. It stood on the corner of Brinley Avenue and Main Street in Bradley Beach. At that time it was the Bradley Beach Bank. My father owned the town bar, and I needed to buy a car in order to be a teacher in Newark.

I walked into the Bradley Beach Bank. I didn't want my father to co-sign. I never had credit before. I never

borrowed any money. We didn't get credit cards in high school sent to us in the mail, like my children have gotten.

I went and talked to the president of the Bradley Beach Bank and said, "I need to buy a car. Here's my contract. I don't have any credit. I don't want my father to co-sign. I'm buying the car in Asbury Park. Will you lend me the money?"

They lent me \$3000. Six months later-- I bought my car. Six months later, I was a Newark teacher on strike. I was out of work for 12 weeks. I went back to the Bradley Beach Bank. I spoke to the president. I walked in and talked to him, and I said, "Look, I can't make my car payments. I'm on strike. I'm out of work. But when I go back to work, I'll make the payments a month and a half at a time and I'll bring it up to date." The president said, "Fine."

In 1970 I was once again a Newark teacher faced with being out of work due to a teachers' strike. I went back and did the same thing.

In 1972 I went to jail. I was out of work for four weeks serving my time as a Newark teacher who had been arrested in the teachers' strike. I did the same thing.

Three years passed. I paid my car off, and it established credit, because I could walk into the Bradley Beach Bank, talk to the president, and explain my personal situation.

Now the Bradley Beach Bank has become the Central Jersey Bank of New Jersey and is soon to be NatWest. I don't know that I could do the same thing today, but that's what our philosophy of banking is at Citizen Action. We believe that as banks get bigger, they must get better. And we look to the times in 1969 when consumers could do what I did as the way that we hope that consumers will still be able to do.

New Jersey Citizen Action, for the last nine years, has been working with New Jersey's largest banks, and now New Jersey's smallest banks in an effort to work together to increase the amount of money that low, moderate, minority people

can borrow in New Jersey to open up small businesses, to buy homes, and to build housing.

Citizen Action is extremely concerned about the effect the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 will have on New Jersey's citizens.

As interstate mergers and acquisitions of a bank or branch take place, as out-of-state banks move into New Jersey, and as foreign banks cross the ocean and settle into our State, there is absolutely no guarantee that service to New Jersey's residents, particularly in low and moderate minority communities, will improve. There is absolutely no guarantee that lending discrimination will decrease. There is absolutely no guarantee that as these banks get bigger, they will get better.

There will, however, be an acceleration of the already rapid pace of consolidation in banking. Eventually, it will mean fewer and bigger banks, layoffs among bank employees, and probably less control of lending by local bankers. I just heard that it doesn't mean layoffs, and I'm concerned about that because-- I'm happy, but I don't know if I believe it, because in all the recent mergers that have taken place in New Jersey, we're hearing about the layoffs that have taken place in the banks. We haven't heard about major hirings.

So, if what the Chairman says is true, I'm pleased to hear that, but I don't know why it hasn't happened in the past. New Jersey Citizen Action is concerned that there will be an increased concentration of money and power in fewer and fewer banks. This is something that we worry about. Right now, several New Jersey banks are leading the way in improving banking services to the cities, and they have developed leaders within their own organizations who are really dedicated to improving lending patterns in our urban communities. There is absolutely no guarantee that people will have the power and that

they will control the decision-making, as banks grow into megagiant corporations.

Large coast-to-coast banking giants will be able to consolidate their operations into a single institution. Decision-making is likely to become more centralized, and therefore more removed from our communities. This will make it harder for local groups, like Citizen Action, to get nationwide institutions to respond to our particular needs and local conditions. Reclaiming our distressed communities requires meaningful involvement of banks, not bank managers who live hundreds and hundreds of miles away from the people upon whose decisions they are making will have impact.

Interstate branching is pure and simply a gift for the large banks. In fact, most community banks oppose interstate branching. In addition, 1992 and 1993 were the most profitable years ever in the history of American banking. Why, after a \$300 billion bailout and record profits, are we giving them a gift which we believe works against consumer and community interests?

Interstate branching makes it much easier for expanding banks to enter new markets on a selective basis by cherry picking the branches they buy from other financial institutions. Interstate branching can lead to the loss of valuable information currently reported on the Statement of Condition Reports to the regulators on the lending activities of banks on a state-by-state basis. Interstate branching may result in the siphoning of deposits from our communities, more branch closings, and by the way, not one bank when you speak of branch closings, Assemblyman Jones, not one bank that we have ever sat down with has agreed to hold public hearings before they close a bank. And that's something we've been requesting since we started doing this in 1986.

Regional banks will become nationwide banks. There might be a scaling back or a phasing out of regional

headquarters that some banks maintain in New Jersey. We think jobs could be lost. There is absolutely no guarantee that the savings that some of these banks realize through internal consolidations will ever be passed on to consumers.

According to Paul Nadler, a professor of finance and economics at Rutgers Graduate School of Management, "Big banks snatch defeat from the jaws of victory. They have a way of turning customers off." You must make the commitment that this doesn't happen.

Apparently, it looks like this is a done deal, and we're going to implement some part of this Act. It is very important that consumer organizations, like Citizen Action, be allowed to sit at the table and be allowed to have equal participation in what Mr. Griffith described as a compromise piece of legislation.

If New Jersey is to opt into the provisions of this law, then the New Jersey Department of Banking must become a vigilant advocate of the consumer, particularly low, moderate, and minority borrowers. The Department must be adequately funded and staffed with people who are experienced and sensitive to the needs of the community. Money must be provided to make sure that the Community Reinvestment Act and all of its intents above the Community Reinvestment Act are maintained. Moneys just cannot be funded to provide for the additional paperwork that these mergers and these megagiants are going to create for the Department. Real money has to be placed in the Department of Banking to make sure that it becomes a consumer friendly department, and a place where people and groups like Citizen Action can go for information on banks, and a place that will adequately monitor all the banks -- not just state chartered banks but all the banks doing business in New Jersey.

Eliminating lending discrimination must become a priority, and strong regulations must be passed to guarantee that that Department of Banking has clout, and that they become

a true advocate in making sure that, in fact, as banks get bigger, they do get better.

The weekly bulletin that was put out on the 17th by the Federal Reserve scared me a little bit when you look at the activity that's taking place in New York. I just want to share this with you.

The Russian Federation of Moscow -- the Bank for Foreign Trade of the Russian Federation of Moscow is establishing an office in New York. The Peoples Construction Bank of China, Beijing; the Joint Stock Investment and Commercial Bank for Construction, called Promis Stok Bank of Russia (phonetic spelling); the ABSA Bank, Limited, Johannesburg, South Africa-- If this is what is going to be happening in New Jersey by the passage of this legislation, then New Jersey has to become the leader in making sure the consumers get more and not less as banks get bigger.

Thank you.

SENATOR INVERSO: Thank you. I think the comments that have been made heretofore regarding our approach to this review of the Federal legislation and where we should go in New Jersey, I think, indicate clearly that we recognize the role the consumer plays in this process. Certainly, your presence here today is indicative of that, and hopefully we will continue to work, going forward with you. We are well-aware that credit has to be available and accessible to all the people of New Jersey. Nothing that we do in our legislation should in any way impair that availability or that accessibility.

We're glad that you came here to raise these concerns with us. That's not to say that they weren't on our list, too. We appreciate it.

ASSEMBLYMAN LUSTBADER: Ms. Salowe-Kaye--

SENATOR INVERSO: She wants to respond.

MS. SALOWE-KAYE: I just have one comment for you. In your opening statement you talked about you want to make sure

that those who have traditionally -- that we protect those who we have traditionally protected. My concern is that--

SENATOR INVERSO: No. I said, "who have traditionally been least able to have access to credit."

MS. SALOWE-KAYE: Right. My concern is that we protect the people who have not traditionally had access to credit in New Jersey, the people who come up on the lowest end. And I hope--

SENATOR INVERSO: And you want me to add, "have not, and least able," then I'll add that. I think it is semantics that we're involved in right now. It's clear where my interests and concerns are relative to the consumer side of this equation. We want to open up credit availability and maintain credit availability. Nothing relative to interstate branching or banking to the extent that it will engender consolidation, growth, and size, nothing should occur that also limits--

I'm a consumer. You're a consumer. We're all consumers here, and we don't want to see the megacorporations in any way get in a position where they can decide who they can give credit to and who they won't give credit to. We can't let that happen. We're with you on that.

ASSEMBLYMAN LUSTBADER: I think your argument, in my judgment, would lend support for this entire body of statutory changes, because what you are saying, as I understand it, is historically, the small borrower, the local community has not been well-served -- or at least in your judgment, you think that they could do better in terms of serving the local community, and particularly those people who are economically marginal and having difficulty in getting credit. So I would think that you would be open to what we are trying to do here, because this is a great opportunity to address that problem.

And as far as I'm concerned, the other aspect of this legislation, which is the Community Development and Financial Institutions Fund of almost \$400 million, is something that we

can look forward to for revitalization of the economy. So I think there are a lot of good things here that we can work on to advance your agenda.

MS. SALOWE-KAYE: I think both small banks and big banks offer the consumer different things. Some of them can be very positive from both types of banks. What I am concerned about, as decision-making gets further removed from communities, and as banks grow and put together more power and more money in fewer places-- It has been hard enough dealing with the situation that we have now, and I'm afraid that it is going to get worse unless there are some real specific parts of your legislation that speak to the issues that I raised.

SENATOR INVERSO: Can I ask, could you provide us with any recommendations that we ought to consider in the process -- things that concern you that we should have, at least on the table with all the other variables that we discussed earlier that we need to look at in terms of choosing the right way to go? I would appreciate it.

MS. SALOWE-KAYE: Sure.

ASSEMBLYMAN LUSTBADER: Thank you.

SENATOR INVERSO: Senator Kenny?

SENATOR KENNY: I think it's good that Commissioner Randall is still here. She testified early, two hours ago, and she's still here and she's listening. I think that's a very good sign that the Commissioner of Banking is going to be looking at this closely. And I don't say that as a -- just to throw a compliment at her, but because I think, as we go along here, we're talking here not about a matter of degree of change but a wholesale change, apparently, in the way banking is going to be done in the country as well as the State. A difference in kind rather than merely a difference of degree. So we are really on the verge of a revolution in this industry, and we have a big job ahead of us to monitor it very closely. That's why we've already had about a half a dozen issues put out there

this morning, including the ones you are addressing and consumer concerns, that I think are going to require a lot of work by staff and by the interest groups that have to come forward and represent the issues. We have to then pick and choose among these things in order to arrive at a good policy, you know, the de novo entry, the taxation issue, the dual regulatory issues; how aggressive we are going to be to make our State a major banking state for the big banks. All of those things are before us.

I think the Commissioner has a very, very major -- probably the most important task of her tenure is going to be around these changes. As I said before, this is a first impression issue for me over the last several days, but I can see this being one of the most significant things the Legislature undertakes over the next year or two.

So we have a lot of work. I'm sure there is going to be a lot of political contests over a number of these issues, and what we need, as I asked Mr. Griffith for earlier, and I would just, through the Chair, as he said, we need to become-- The political community here needs to become very aware of all of the variables and how we react to each one and the effect of that reaction on other ones. We really have to get a handle on this fairly shortly.

Thank you.

SENATOR INVERSO: Thank you.

ASSEMBLYMAN LUSTBADER: Thank you.

Ronald Janis.

**R O N A L D J A N I S, E S Q .:** I'd like to thank you for the opportunity to speak today.

SENATOR KENNY: I'm sorry, I didn't hear the name.

MR. JANIS: Ronald Janis. I'm a partner at Pitney, Hardin, Kipp, and Szuch, which is New Jersey's second largest law firm. I'm also Vice-Chairman of the Asia Law Committee of the International Law Section of the American Bar Association.

What I do for a living is primarily represent New Jersey commercial banks. I think our firm does at least as much merger and acquisition and bank regulatory work as any firm in New Jersey. The other part of my practice, however, is representing Korean companies. I've closed syndicated loans in Seoul, Korea; I've lectured in Seoul, Korea on mergers and acquisitions, and the one thing I feel strongly about is that New Jersey has a real interest in international commerce and international banking, but historically New Jersey has a law which prohibits foreign banks from being present in New Jersey.

I've lectured the Korean banks in New York about how to comply with the Federal laws relating to foreign banking, and they have asked me several times why New Jersey doesn't allow foreign banks to be present in the State, and that is, I've found, a difficult issue to answer properly.

I'm here today to speak in favor of allowing foreign banks to open representative offices, agencies, and branches in New Jersey. As I understand from what's been said up to now and what's been said to me by some of my commercial bank clients, I'm at odds with almost all of them about that issue. The reason I'm willing to speak out, however, is because in the State of New York, where they have historically allowed foreign banks to operate, New York has estimated in 1992 that there were 100,000 jobs in foreign banking in the State of New York, and that there were over six million square feet of office space leased to the foreign banks in New York.

I believe, looking ahead, that it's very important for New Jersey to allow foreign banks to enter the State. I also believe that the de novo entry of foreign agencies, branches, and representative offices in New Jersey is a very important issue to encouraging the foreign banks to be in New Jersey.

I've spent a lot of time with foreign banks trying to encourage them to come to New Jersey, and what I've learned from that is that they wouldn't be willing, for the most part, to buy

a branch or a bank in New Jersey in order to enter the State. I think it's a very difficult issue for them, and it's a little complicated to understand, so I'd like to just give you a little background in foreign banking, limited to branches and agencies.

Historically, branches of foreign banks were allowed FDIC insurance, but after 1991 foreign branches are no longer allowed FDIC insurance. So what you have are agencies and branches which are wholesale banking institutions, which provide services to multinational corporations, primarily. The Korean banks, for example, provide commercial banking services to the Korean companies in New Jersey. They do that presently from New York. It requires that the Korean companies in New Jersey go to New York to do their banking, something that they don't actually understand why they have to do. They would be, I think, happy to enter the foreign banking here in New Jersey and are anxious to do that, if they were given an opportunity.

What currently prohibits that and what will prohibit it absent the de novo branching option in New Jersey would be the fact that they then would be required to buy a branch of a bank in New Jersey or buy a bank in New Jersey, which I think may make sense to you unless you're sitting in Seoul, Korea at the Ministry of Finance trying to convince the Ministry of Finance in Korea why, in order for the Bank of Seoul, or some other bank in the United States to get into New Jersey, they have to buy a U.S. bank. The issue there is whether or not the Ministry of Finance in Korea, for example, would be interested in having the Bank of Seoul taking that kind of risk, buying an institution that the Ministry of Finance knows nothing about.

In Korea, for example in Seoul, there are branches of Chemical Bank and branches of Citibank, which are located in Seoul, and which have the freedom to be located there just as the Bank of Seoul and Korean banks have the right to do business in New York. What they don't have is the right, at this point, to do business in New Jersey.

I think there is a lot of tension in the issue between the commercial banks and between what I see as the interest of international commerce. I understand from my own practice why the commercial banks in New Jersey do not want to allow de novo branching, but I don't think we will have or open our doors to a significant amount of foreign banking unless we allow de novo branching in New Jersey. I think that is a significant problem that this Committee, in the legislation, is going to have to deal with.

I do have an additional suggestion as to how to proceed, because I think, especially in the foreign banking area, it's difficult. New York, which has had 50 years or so of foreign banking, has established a regulatory scheme where the State Department of Banking in New York examines all the foreign banks; they set rules and capital requirements for the foreign banks that are present in New York, even when those banks operate only by branches and agencies and representative offices. They govern the safety and soundness and the operation of those branches and agencies, and I think it would be helpful for the Committee to look at that model that New York has as a way of encouraging those kinds of branches and agencies to be present in New Jersey. I think it provides an opportunity for the Department of Banking to interact with these foreign branches and agencies in order to foster international business in New Jersey, and I think that will turn out to be something that, in the long run, will be very helpful for the State.

I would suggest that the issue of taxation, especially of foreign banks, is fairly complex. There are a lot of excellent accounting firms located in New Jersey which deal with those issues primarily for their New York clients, and I'm sure consulting those people would be an excellent idea in terms of determining how New Jersey can approach the issue of taxation of foreign banks. The issue of international taxation, as well as interstate taxation is complicated, and I think the help of

those accounting firms would be crucial in setting up a system that worked in New Jersey.

I don't want to take up too much more of the Committee's time in this, but I would be happy to entertain any questions about foreign banking. I think my position is, unfortunately, at odds with a great many of the other people who have testified.

SENATOR INVERSO: I have a question. Earlier we heard Mr. Griffith say that until such time as there is complete reciprocity, the balancing of the playing field, if you will, we should not entertain foreign banks coming into New Jersey. Your experience in Korea, is there reciprocity in Korea?

MR. JANIS: I think what you realize when you get into international affairs is that reciprocity is a difficult issue, and from a national point of view, I think reciprocity is an excellent idea -- a good tool. But looking at the State of New Jersey, if we have a reciprocity rule and New York doesn't, all we do is encourage people simply to locate in New York and avoid having them locate in New Jersey, which does not make a lot of sense from a long-term economic perspective. It's the 100,000 jobs, where we have a bar to having any of those jobs present in New Jersey.

I think there are also--

SENATOR INVERSO: Does Korea have an open-door policy to the United States with regard to banking? Let's not talk about New Jersey or New York. Or is it selectively done?

MR. JANIS: It has a regulated policy, just as the United States does now. A foreign bank could not enter New Jersey without being subject to approval by the Federal Reserve system, and the same is true in Korea. A foreign bank couldn't enter Korea without approval of the Korean banking system. There are some other additional restrictions. I wouldn't say it's completely comparable.

SENATOR INVERSO: Okay. So it's controlled open door?

MR. JANIS: It's controlled, but it's opening up. Just to provide an example: In Korea two years ago, foreigners weren't allowed to buy stock on the Korean stock exchange. Now they are allowed to buy up to 10 percent of the stock, and on December 1, it will go up to 12 percent of the stock of any publicly traded company.

SENATOR INVERSO: So there is no question, I think, we are becoming one marketplace, and eventually we'll get there. It's a question of nurturing that environment. I think things begin slowly, and eventually, you know, we chip down on some of the restrictions that control. I remember years back, with Japan, a company that I was with, we wanted to have a joint venture. We couldn't own 50 percent; now you can own 100 percent.

So these things take-- They're evolutionary, certainly, but by the same token, I think there is benefit to, in essence, a controlled maturation process along the way. We just can't expose our home industry, in this case the banking industry, to unfettered competition when they don't have the same opportunities. You may not want to take advantage of the opportunity, but at least they know if there was a desire to do so, the door is open to that.

MR. JANIS: I would also like to point out that there are some unique wrinkles in the system in New Jersey. For example, while foreign banks can't be in New Jersey, there is no problem with foreign brokerage companies. So for example, Nomura Securities is here, (phonetic spelling) and Nomura Trust Company, which is a subsidiary of Nomura Securities, is also here. So what we're really doing is simply prohibiting certain kinds of foreign owned banks from being present in New Jersey.

ASSEMBLYMAN LUSTBADER: I think we've been shown here in New Jersey that states that are our neighboring states -- the ones that border us -- have been in some cases very aggressive in attracting banking business. What concerns me is if a state

like Delaware, which has always been quite aggressive in seeking business, should allow foreign banking, and we, hypothetically, were to resist it, don't you think that would play out negatively for us?

MR. JANIS: I think it already does in several areas, and I think that if Delaware opened its doors to foreign banks, which I don't see as a problem for them, it just is going to mean that the foreign banks have less understanding of why New Jersey is discriminating against their presence in the State, which is what it looks like from the outside.

ASSEMBLYMAN LUSTBADER: Are there any questions from the Committee?

ASSEMBLYMAN JONES: Mr. Chairman?

ASSEMBLYMAN LUSTBADER: Assemblyman Jones.

ASSEMBLYMAN JONES: Just one request. Senator Inverso had broached the subject that I was leading to, which was the issue of complete reciprocity. You've obviously shared some of your views with the Committee. I would think, inasmuch as this issue of reciprocity could prove to be a linchpin relative to foreign banking entry into New Jersey as a part of the legislation, it may bode well for consideration to be provided with, perhaps, the recommendations that we can achieve some level of reciprocity which may be somewhat of an enhancement for further consideration on the issue of foreign banking.

MR. JANIS: The Federal legislation now pending is going to look at reciprocity on a nationwide basis. What I think New Jersey can't effectively do is look at reciprocity individually. In the cases where states like Illinois have tried to look at reciprocity on an individual basis has lead to legal difficulties leading to those particular provisions being stricken as contrary to international trade laws, international treaties, and other issues. I just think, from the perspective of what we can do, we certainly can't pass consumer laws protecting the residents of New Jersey, but once we try to

legislate for ourselves in the State of New Jersey a quality of banking type system, we'll leave ourselves behind New York and Delaware, and it does not strike me as a state type issue, but rather a national issue.

ASSEMBLYMAN JONES: Mr. Chairman, just one comment. I had an earlier conversation with Congressman Payne, who had indicated that there were two congressmen, Congressman Mfume and Congressman Flake, who had been involved with the crafting of or played roles in the interstate banking legislation as it pertains to the issue of foreign banking. I'd be more than glad to advance further discussion to see the direction the Federal government is taking with respect to reciprocity and its effects on foreign banking, which would obviously have some impact here and throughout the nation.

SENATOR INVERSO: I would agree it's really an international issue, both a state and a national issue, but I think certainly we've got to keep it on the agenda in terms of the impact on New Jersey. But I think it's more of a global question than a state issue.

ASSEMBLYMAN LUSTBADER: Thank you, Mr. Janis.

Jeff Connor?

**G E O F F R E Y M. C O N N O R, ESQ.:** Thank you, Mr. Chairman and members of the Committees. I'm Jeff Connor. I was banking commissioner under Governor Florio. I'm now a partner of Reed, Smith, Shaw, and McClay. I'm appearing today on behalf of the New Jersey State Bar Association, and in particular the Banking Law Section, and with me is the Chairman of that section, Christine V. Bator. What the Bar Association asked us to do is to make technical comments on the interstate branching law, not just advocate the position so much, as to give a road map of issues to be looked at. So I think, Senator Kenny, in a sense, this is part of what you were looking for.

I submitted testimony, but instead of reading it, I'll just quickly go down the different topics that I see that are

within the discretion of the State of New Jersey in terms of the legislation that you are developing. Some of these have been mentioned before.

The first is, you may opt in or opt out of interstate branching. You can wait until the effective date of June 1, 1997, or you can opt in sooner than that if you choose to. If you opt in sooner, it would be reciprocal until June 1 of 1997, and then we would have interstate branching with any other states that had not opted out. The ones that opted out won't be part of that.

Senator Kenny mentioned taxation of branches, and clearly that is something to be resolved. We already have interstate branching with savings and loans, and for example, you have Sovereign Bank, FSB, already with branches in New Jersey, so presumably the Department of Treasury already has an idea how to tax them, or maybe not, but they are here with branches. But clearly that's an issue to be resolved, how do you tax these branches.

The Federal law specifically says you have the authority to protect new charters. In other words, if a bank is five years old or less, you can, on the State law level, say that that bank cannot be acquired or put other restrictions there.

Right now in New Jersey, by regulation, we protect new charters. We don't permit acquisition of a new charter for five years except in the discretion of the Commissioner of Banking. It can be authorized and would be if there was a supervisory problem. If a bank would otherwise fail, you would rather have it acquired to prevent the failure. But that is just a regulation. As I read this law, there has to actually be a State law protecting the new charters. So you might want to consider if you want to do that or not.

There are plenty of reasons why you would, and that is new charters aren't granted in order that someone could turn

around and sell it the next day at twice book. The idea is that they are creating a new bank that is supposed to be in existence, and five years does seem like a reasonable rule, as long as you leave some discretion in the Commissioner of Banking. If there is a supervisory problem, it may very well be better to have that charter acquired than to fail.

The next is de novo branching, which has been discussed at great length here. You can prohibit de novo branching. You can prohibit entry by the acquisition of branches only. So someone couldn't come in and buy five branches, they would have to have a charter. You can require entry in that way, and we've heard a lot of reasons why that would protect the franchise value and the shareholders of local banks, make those banks more valuable. There was also contrary testimony, and I will deal with the foreign question in a second.

There has been reference already to dual banking systems and protecting that. We certainly want state chartered banks to enjoy interstate branching if the national banks can. There are two separate areas in particular, one is the powers area, and the other is the consumer protection area. What the law says is that a state chartered bank coming into New Jersey looks for its powers to state law. Some banks, for example, Chemical Bank, is a state chartered in New York -- Bank of New York is. Would you want them to be state chartered in New Jersey. Right now they are national banks chartered in New Jersey, and if you do, you might look at this powers question, because it's very important to them. They don't necessarily want to just have to look at the state laws for their powers when their competitors can look to the national bank laws for their powers.

One solution to this problem is something called parity; and that is, you just have a state law that says, whatever powers a national bank has, state banks have those same

powers. We have parity laws in New Jersey, and I give citations for them. The problem now is that it is a very complicated area. It says, in the state law, that you can have parity unless it's "contrary to law to have the parity." We get questions all the time. You have a state requirement on second mortgages, for example, that they be amortized over 240 payments. There is no such requirement for the national banks' second mortgages. So a bank looking to this parity would want to know, "Well, can we or can't we? Is that contrary to law?" I don't think it's an open and shut question. But the interpretation usually given is, you can look for authority in different statutes, and if you find it in any statute, Federal or state, you can use that. But that's not necessarily clear from the language of this parity statute. So I think you might want to look at it.

The savings and loan parity statute says you can do it unless prohibited by law. That's an easier wording. In the example I just gave, it doesn't prohibit the interest only second mortgage, so you can make it for the savings and loan but not for the bank.

So I would suggest you look at the whole parity quagmire, is what I call it, in terms of, do you want to give straight parity so that the state banks have whatever powers the national banks have to facilitate the state chartered banks coming in, rather than having to switch to a national bank charter.

The Foreign Banking Act in New Jersey has been discussed. As worded right now, and it's at N.J.S.A. 17:9A-316, it defines as a foreign bank an out-of-state bank as well as an overseas type bank. It says that a foreign bank can't do business in New Jersey, except that an out-of-state type bank can be a testamentary trustee and a few other minor exceptions.

Now that law is going to have to be looked at. If you are allowing interstate branches, then they are doing business

in New Jersey, which is inconsistent with the New Jersey Foreign Banking Act. Presumably, you are going to have to repeal it in large measure or go through it and do something with it, because it's inconsistent with the idea of letting a branch come in.

Now in terms of the truly foreign banks, the way this interstate banking law is written, it says they have to set up a U.S. subsidiary. Once they set up a U.S. subsidiary, it's treated like a U.S. bank. So a U.S. subsidiary of NatWest in New York becomes a U.S. bank even though it's an English bank, and it could branch into New Jersey. That's what this law says, and you can't really stop that. Once they have a subsidiary in the U.S., they are treated like U.S. banks. You can stop them from branching in from overseas, which is what Mr. Janis was talking about, and I think that that is so controversial that as you enact enabling legislation for interstate branching, I think you might not want to deal with that here. You might want to make that a separate case to study. If you want to allow true foreign banks to branch into here, my suggestion, that would be a separate bill to think about, but not get it muddled up into the interstate branching bill. You heard reasons pro and con for it.

I would suggest, besides reciprocity, you would also want to look to see if the home country had adequate supervision of banks. BCCI was a disaster. Whether or not its home country had reciprocity is one question, but another question is, did they adequately supervise it, and clearly, they did not.

Another area left to the discretion of the state Legislature is the antitrust area. The Federal law says that no bank can have more than 10 percent of deposits nationwide or 30 percent in a state. Now, do we want to end up with a New Jersey that has only four banks in it, because that can happen under that kind of an antitrust law. You have the power to have a different antitrust standard, tougher or laxer. We once had a law that said you couldn't have more than 20 percent deposits in

New Jersey. That law was repealed, but it's certainly something to look at. Would you want to have a law -- an antitrust law -- that was stronger than this 30 percent requirement?

You have in your discretion to regulate intrastate branching. In some states-- New Jersey once said you can only branch in a county, and then contiguous counties, and finally statewide. New Jersey now allows statewide branching, so it would be turning the clock back. But you do have it within your authority to restrict intrastate branching once they are within the State.

You have consumer protection, and what the law says is that State law applies in consumer protection areas, fair lending areas, community reinvestment areas, unless preempted by the national bank authority. Before, it was easy to preempt. We have our lifeline checking account law, which was preempted by the Comptroller of the Currency. You heard the Commissioner say they are going to rethink that, and maybe they won't preempt it. But before they preempt it now, they have to publish a notice and have a hearing, so at least we'll know ahead of time, in comments, if they are going to preempt.

I would suggest we always keep an eye, as Rich Ober pointed out, on what laws apply to state chartered only as opposed to national, and if it is preempted for national banks, you would certainly want to consider if you want it to apply only to state chartered banks, and that puts them at a competitive disadvantage.

So there is a quick outline of 10 issues that are within your discretion. As I say, the State Bar didn't want us to take a position, they just wanted us to give citations and names of specific laws and regulations that you would want to have a look at as you consider this legislation going forward.

**CHRISTINE V. BATOR, ESQ.:** I'd just like to add that as Chairman of the Section, we've really, for the longest time and for as long as I've been on the board, have felt that

the banking laws in New Jersey need to be looked at in totality. That's a very big project. This year I've decided to form a committee to start working on that project, and we will be at your disposal to help you with whatever legislation you draft. I think that our goal is to make sure that the legislation at least doesn't impact on something which you're unaware of. So, with all of these minds working together, I think we'll come up with legislation that will be good for New Jersey.

I'd like to add that when I was on transition, many of the comments that were brought up here today were comments that were raised on the transition team. Basically, credit availability was an issue, and Jeff had the credit crunch task force. I still think that that is alive today. I think that is important. We need to make sure that whatever legislation is passed, it does not impact adversely on credit availability for small businesses, and women and minority businesses, the fastest growing segment of our economy.

Also, the issue raised by Rick Ober about credit card banks that was raised in transition, how we lost a tremendous amount of business to Delaware because of our policy.

MR. CONNOR: Thank you, Mr. Chairman. Are there any questions?

SENATOR INVERSO: A comment. You are, indeed, fortunate to have Jeff Connor with you. His knowledge as to New Jersey's banking sector certainly is extensive, and we certainly appreciate your coming forward. I think you've done a wonderful job summarizing some of the salient areas that we have to concentrate on, going forward.

MR. CONNOR: Thank you.

SENATOR INVERSO: And it's understandable.

Any questions? (no response)

SENATOR KENNY: Thank you. A very good presentation.

MR. CONNOR: Thank you.

ASSEMBLYMAN LUSTBADER: I'm beginning to feel that it's almost imperative that we start looking at the whole body of banking laws in the context of this legislation, because if we're going to enact any legislation based upon the Federal Act, we don't want to further complicate the body of State existing law. I think they all interface and we have to deal with that. So I would encourage anyone who chooses to start working on that and also to keep in touch with our respective committees on that issue, because I don't want to see-- I would like to see, rather than piecemeal, I'd like to see it all interact in a favorable way with the Federal legislation and the legislation that we need to implement.

Thank you for coming.

MR. CONNOR: Thank you.

MS. BATOR: Thank you.

ASSEMBLYMAN LUSTBADER: Sam Damiano?

**S A M U E L J. D A M I A N O, C.C.E.:** Gentlemen and ladies, my name is Sam Damiano, and I'm here on behalf of state chartered savings banks, a 150 year old industry. The organization representing these savings banks has been in existence for 86 years.

There are a series of concerns, quite frankly, and I'm trying to focus in on those that haven't already been presented to you, in the interest of time. But I think something that needs to be restated is the fact that throughout this entire Federal legislation, there is no reference at all to a Federal savings bank. I think Rick Ober alluded to it earlier by noting that there were no references to national charters. To our way of looking at it, and we are an industry that has always been state chartered, and continues to feel strongly in the interest of preserving the dual banking system, and that, frankly, is our bias.

The fact of the matter is, there is a clear signal coming out of Washington, and this legislation recently enacted

is just another symptom, if you will, of what's happening to the state charter versus the Federal charter. We, last year, in our enthusiasm to play a role in the interstate branching scenario, embraced a piece of legislation that was being drafted that would have given state chartered savings banks what we refer to as parity with our Federal counterparts. That is to say that they could branch across state lines, whether de novo or otherwise, providing it was on a reciprocal basis. We did, in fact, endorse that.

The truth of the matter is that any discussion relating to de novo branching today may already be academic and too late, because there is de novo branching within the State of New Jersey. A Federal institution can branch de novo into this State. Any state chartered institution can apply for a Federal charter. Therein, we find conflict.

The challenge to the entire body of the Legislature really is, how do you come up with a set of State law that will counteract the attractiveness of a Federal charter, if, indeed, you are anxious to preserve the state charter and the dual banking system. Failure to do that could ultimately result -- and I don't have a crystal ball -- but the failure to do that at the rate of Federal legislation coming down the road would mean that this body, at some point in time, would be simply here to talk about mundane issues. And with all due respect, the Department of Banking would have even less responsibility.

We are not in support of that thesis, nor do we hope to see it occur. So your challenge, indeed, is immense.

With all of that as background, we continue to support the initiative to opt in. We would hope that the Legislature, in its wisdom, will move quickly in that regard. We do not want to get into a debate over whether or not de novo branching is real, imaginary, or postponed. We have chosen at this juncture to hold that position in abeyance in the interest of not being

a deal breaker, if you will; therefore, demonstrating our willingness to be open minded.

I think the other concern, and it will be my final comment, as it again relates to the Federal charter, is how we as a State regulate their presence. But more importantly, what do you do to regulate the deposit flows, and how do you guarantee that there is a reinvestment requirement?

I leave that with you for your indulgence and digestion, and thank you, again, for the opportunity to be here today.

ASSEMBLYMAN LUSTBADER: Questions?

SENATOR INVERSO: Comments? (no response)

ASSEMBLYMAN LUSTBADER: Thank you, Sam.

SENATOR INVERSO: Thank you.

ASSEMBLYMAN LUSTBADER: Our last witness today will be Jim Meredith.

**JAMES M. MEREDITH:** Good afternoon. I, too, appreciate the opportunity to testify before these Committees. I represent the New Jersey Savings League. We are the trade association representing 82 savings institutions in the State. Those 82 institutions are comprised of both State chartered and Federally chartered savings and loans as well as savings banks.

Certain aspects of the Act leave little or no choice to the states, most importantly, that effective September 29, 1995, bank holding companies in other states will be authorized to acquire banks in New Jersey without regard to existing State laws limiting such acquisitions. We do not see this provision as a concern.

My testimony will focus on those parts of the law that give New Jersey a choice to make. First and foremost of those choices is whether to permit interstate branching and, if so, on what basis.

The Act requires action by New Jersey with regard to interstate branching to avoid putting State chartered

institutions at a competitive disadvantage. While the State can either act to permit interstate branching or prohibit such branching, if it does nothing, national banks will be able to branch into and out of New Jersey effective June 1, 1997, while State chartered institutions will not be allowed to do so. Federally chartered savings institutions, as you've heard, are currently authorized to branch nationwide, and one of New Jersey's State chartered savings institutions has already changed to a Federal charter, and another has applied to change charters for the same reason.

The New Jersey Savings League recommends that State law be amended to permit interstate branching for all banks and savings institutions, subject to certain conditions, effective at the same time that the new interstate acquisition authorization takes effect, in one year.

The Act allows states that act to permit interstate branching to set conditions on such branching until June 1, 1997. The League recommends that New Jersey condition that such branching be on a reciprocal basis to encourage neighboring states to also act to permit interstate branching. Otherwise, banks and savings institutions in a state such as Pennsylvania would be able to branch into New Jersey, but New Jersey-based institutions might not be able to branch into Pennsylvania.

The Act gives the state the option of whether to permit interstate branching only by institutions that acquire an out-of-state institution and then merge with their existing organization or to also permit de novo branching and branching by the acquisition of out-of-state branches of other institutions. Again, Federal savings institutions are currently authorized to do interstate branching by any of those methods. The New Jersey Savings League recommends that New Jersey authorize all three forms of interstate branching. This would give institutions the flexibility to branch in the manner most suited to their institution and to the particular circumstances.

To the extent that the New Jersey Department of Banking believes that it needs additional authority to regulate and properly supervise New Jersey branches of out-of-state institutions, we recommend that the State Legislature grant such authority. We do not believe, however, that New Jersey needs any further consumer protection laws in connection with interstate branching, as adequate protections are included in current laws and in the provisions of the Act which seek to prohibit out-of-state institutions from using New Jersey offices to simply obtain deposits without striving to meet the credit needs of the local New Jersey community.

Thank you very much for this opportunity to testify.

ASSEMBLYMAN LUSTBADER: Thank you.

SENATOR INVERSO: Thank you.

Any questions? (no response)

We will certainly chew on those recommendations and those conditions. I think certainly the one about reciprocity makes sense, obviously, in the direction of the discussions earlier. And the other, there is a problem with them, but I want to defer to the Commissioner of Banking first, their position on those conditions.

ASSEMBLYMAN LUSTBADER: Thank you.

That completes the oral testimony today. This meeting was, more or less, for openers to begin the process of creating some bills that will address the concerns of the witnesses. We would invite any written comments from people who have testified today or people who have chosen not to testify by November 25, and they can be sent to our committees.

As I said earlier, I think there will be several committee hearings in our respective committees, and there will be ample opportunity for people to speak again on these issues as the issues start to come forward and play a dominant part in the deliberations. So feel free to communicate with us.

We appreciate your presence here today. I think a service was performed in getting all the issues out and scrutinized by the public.

SENATOR INVERSO: Thank you.

Does anyone else have a comment? (no response)

Thank you.

**(HEARING CONCLUDED)**

## APPENDIX

COMMISSIONER ELIZABETH RANDALL'S TESTIMONY  
BEFORE THE JOINT HEARING OF THE SENATE STATE  
MANAGEMENT, INVESTMENTS AND FINANCIAL INSTITUTIONS  
COMMITTEE AND THE ASSEMBLY FINANCIAL INSTITUTIONS  
COMMITTEE  
OCTOBER 24, 1994

GOOD MORNING CHAIRMAN INVERSO, CHAIRMAN LUSTBADER  
AND DISTINGUISHED MEMBERS OF THE COMMITTEES.

LET ME THANK YOU AND CONGRATULATE YOU FOR HOLDING  
THIS IMPORTANT HEARING ONLY ONE MONTH AFTER PRESIDENT  
CLINTON SIGNED THE BANKING EFFICIENCY ACT OF 1994 INTO  
LAW.

THIS NEW LAW ALTERS 150 YEARS OF U.S. BANKING POLICY.  
THERE ARE TWO COMPONENTS OF THE BANKING EFFICIENCY  
ACT OF 1994: BANKING AND BRANCHING.

FIRST, THE LAW CHANGES THE BANK HOLDING COMPANY ACT TO ALLOW ADEQUATELY CAPITALIZED, ADEQUATELY MANAGED BANK HOLDING COMPANIES TO ACQUIRE BANKS IN OTHER STATES. ONE YEAR POST ENACTMENT, BANK HOLDING COMPANIES MAY ACQUIRE OR ESTABLISH A BANK ANYWHERE IN THE COUNTRY REGARDLESS OF STATE LAW. THIS PROVISION OF THE LAW DOES NOT AFFECT NEW JERSEY SINCE INTERSTATE BANKING ALREADY EXISTS FOR NEW JERSEY IN THE BANK HOLDING COMPANY FORM.

ANOTHER PROVISION, OF THE BANKING SECTION OF THE NEW LAW, ALLOWS BANKS WITHIN BANK HOLDING COMPANIES TO ACT AS AGENTS FOR EACH OTHER, RECEIVING DEPOSITS, RENEWING TIME DEPOSITS, ACCEPTING PAYMENTS, CLOSING AND SERVICING LOANS, AND PROVIDING OTHER SERVICES TO CUSTOMERS OF AFFILIATE BANKS.

THIS PROVISION WILL INDEED AFFECT BANKING PRACTICES IN NEW JERSEY. CURRENTLY , BANKS WITHIN THE SAME BANK HOLDING COMPANY ARE PROHIBITED FROM SERVICING EACH OTHERS CUSTOMERS. FOR EXAMPLE, THE CHEMICAL BANK OF MANHATTAN CANNOT ACCEPT A DEPOSIT FROM A CONSUMER WHO ESTABLISHED HIS OR HER ACCOUNT WITH THE CHEMICAL BANK IN JERSEY CITY. THE BANKING EFFICIENCY ACT OF 1994, ELIMINATES THESE BARRIERS AND IN SO DOING REDUCES RED TAPE FOR INSTITUTIONS AND PROVIDES CONSUMERS WITH NEW FOUND CONVENIENCES.

THE SECOND COMPONENT OF THE BANKING EFFICIENCY ACT OF 1994 IS INTERSTATE BRANCHING UNLIKE THE BANKING COMPONENT, STATES HAVE TO DECIDE WHETHER OR NOT TO PARTICIPATE IN INTERSTATE BRANCHING.

EACH STATE HAS UNTIL JUNE 1, 1997 TO EITHER OPT IN OR OPT OUT OF INTERSTATE BRANCHING. STATES THAT OPT OUT WILL PROHIBIT INTERSTATE BRANCHING FOR BOTH STATE AND NATIONAL BANKS INTO AND OUT OF THEIR BORDERS.

STATES MAY ACT BEFORE THE 1997 DEADLINE TO ALLOW INTERSTATE BRANCHING FOR BOTH STATE AND NATIONAL BANKS.

IT IS THE POSITION OF THE GOVERNOR AND THE DEPARTMENT OF BANKING THAT NEW JERSEY SHOULD INDEED PURSUE INTERSTATE BRANCHING AGGRESSIVELY. BY OPTING IN BEFORE THE 1997 DEADLINE WE WILL SEND A CLEAR MESSAGE THAT AS GOVERNOR WHITMAN WOULD SAY "NEW JERSEY IS OPEN FOR BUSINESS."

OUR PROXIMITY TO WALL STREET, OUR EDUCATED WORKFORCE, OUR FIBER OPTICS NETWORK, MAKE NEW JERSEY AN IDEAL LOCATION FOR BANKS TO LOCATE THEIR HEADQUARTERS OR BRANCHES. BY NOT OPTING IN OR OPTING IN LATE NEW JERSEY COULD BE SQUANDERING A VALUABLE ECONOMIC OPPORTUNITY.

ASSUMING THE LEGISLATURE DECIDES NEW JERSEY SHOULD OPT IN, THERE ARE NUMEROUS ISSUES THAT THE OPT IN LEGISLATION IS GOING TO HAVE TO ADDRESS. I WOULD LIKE TO BRIEFLY OUTLINE SOME OF MY VIEWS WITH RESPECT TO THESE ISSUES.

FIRST, NEW JERSEY IS GOING TO HAVE TO DECIDE THROUGH WHAT MECHANISM INTERSTATE BRANCHING WILL OCCUR. FOR EXAMPLE WILL BANKS BE ALLOWED TO BRANCH DE NOVO OR WILL THEY BE REQUIRED TO BUY EITHER AN EXISTING BANK OR BANK BRANCH.

THIS IS AN IMPORTANT ISSUE AND IT MAY BE ONE OF THE MOST CONTENTIOUS ISSUES THAT EMERGES FROM THE INTERSTATE DEBATE. IN FACT, I AM SURE THAT SOME OF THE SPEAKERS HERE TODAY WILL TESTIFY AGAINST ALLOWING DE NOVO ENTRY. HOWEVER, I BELIEVE THIS ISSUE NEEDS THOROUGH EXAMINATION, AND THE DE NOVO OPTION SHOULD BE PUT ON THE TABLE.

SECONDLY, THE FEDERAL BILL SETS CONCENTRATION LIMITS OF 10 PERCENT OF INSURED DEPOSITS NATIONWIDE, AND 30 PERCENT OF INSURED DEPOSITS WITHIN THE STATE. STATES MAY WAIVE THE 30 PERCENT LIMITATION. HOWEVER, I WOULD ARGUE THAT NEW JERSEY SHOULD NOT REPEAL THE 30 PERCENT CAP SO AS TO MAINTAIN SUFFICIENT COMPETITION IN BANKING SERVICES.

THIRDLY, THE FEDERAL BILL PERTAINS SOLELY TO COMMERCIAL BANKS; IT DOES NOT ADDRESS SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS BECAUSE FEDERAL SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS ARE CURRENTLY PERMITTED TO BRANCH INTERSTATE, NOTWITHSTANDING STATE LAW TO THE CONTRARY. THIS PUTS OUR STATE CHARTERED SAVINGS BANKS AND S&Ls AT A COMPETITIVE DISADVANTAGE, HENCE MANY OF THEM ARE CONTEMPLATING FLIPPING TO A FEDERAL CHARTER SO THEY CAN BRANCH INTERSTATE.

I BELIEVE IT IS APPROPRIATE FOR NEW JERSEY'S OPT IN  
LEGISLATION TO AUTHORIZE STATE CHARTERED SAVINGS  
BANKS AND S&Ls TO BRANCH INTERSTATE ON A RECIPROCAL  
BASIS.

FINALLY, THE INTERSTATE BANKING BILL WILL AFFECT OTHER  
STATUTES CURRENTLY ON THE BOOKS IN NEW JERSEY. BEYOND  
BRANCHING LAWS, WHICH MUST BE ENACTED OR AMENDED,  
OTHER STATUTES SHOULD ALSO BE REVIEWED TO DETERMINE  
THE EFFECT INTERSTATE BRANCHING WILL HAVE ON THEM. FOR  
EXAMPLE, THE GOVERNMENTAL UNITS DEPOSIT PROTECTION  
ACT (GUDPA), WHICH REGULATES THE DEPOSITS OF LOCAL  
PUBLIC ENTITIES, INDICATES THAT THE ACT APPLIES ONLY TO  
BANKS THAT ARE LOCATED IN THIS STATE SHOULD AN OUT-OF-  
STATE BANK WHICH BRANCHES HERE BE ALLOWED TO ACCEPT  
DEPOSITS FROM NEW JERSEY MUNICIPALITIES?

I BELIEVE THIS ISSUE NEEDS TO BE STUDIED FURTHER.

FINALLY, BEFORE I CONCLUDE, I WOULD LIKE TO ADDRESS THE ISSUE OF CONSUMER PROTECTION AND COMMUNITY REINVESTMENT. I WAS VERY PLEASED THAT CONGRESS RECOGNIZED THE IMPORTANCE OF A STATE'S ABILITY TO REGULATE CONSUMER PROTECTION - NOT ONLY WITH RESPECT TO STATE CHARTERED INSTITUTIONS - BUT ALSO WITH RESPECT TO FEDERALLY CHARTERED DEPOSITORIES. MOREOVER, IN THE CONGRESSIONAL CONFERENCE REPORT, THE CONFEREES CITED NEW JERSEY'S LOW COST CHECKING ACCOUNT LAW AS AN EXAMPLE OF A CONSUMER PROTECTION STATUTE THAT SHOULD NOT BE PREEMPTED.

THE BANKING EFFICIENCY ACT OF 1994 ALSO REQUIRES THE FEDERAL RESERVE FOR EACH OF THE SEVEN YEARS FOLLOWING ENACTMENT OF THIS LAW TO SURVEY THE RETAIL BANKING INSTITUTIONS IN ORDER TO DETERMINE THE SERVICES OFFERED AND THE FEES ASSESSED FOR THESE SERVICES.

SPECIFICALLY THE FEDERAL RESERVE IS TO GATHER DATA ON FEES IMPOSED FOR NOT SUFFICIENT FUNDS, DEPOSIT ITEMS RETURNED AND AUTOMATED TELLER TRANSACTIONS. THE FED MUST PROVIDE AN ANNUAL REPORT TO CONGRESS ON THEIR FINDINGS.

IN ADDITION TO CONSUMER PROTECTION, THE INTERSTATE BILL ALSO HAS SPECIFIC PROVISIONS TO ENSURE THAT DEPOSITS TAKEN IN NEW JERSEY WILL BE INVESTED HERE. FIRST, THE LAW REQUIRES A SEPARATE CRA EVALUATION FOR EACH STATE IN WHICH AN INTERSTATE BANK HAS A BRANCH. CRA REQUIRES THAT A BANK LEND TO THE COMMUNITIES SURROUNDING ITS BRANCHES. IN ADDITION, THE ACT DIRECTS FEDERAL REGULATORS TO SET GUIDELINES FOR ENSURING THAT BRANCHES OPERATED BY OUT-OF-STATE BANKS ARE HELPING TO MEET THE CREDIT NEEDS OF THE COMMUNITIES WHICH THE BRANCHES SERVE.

THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
RECENTLY PROPOSED REVISED CRA REGULATIONS WHICH  
STRENGTHEN THE CURRENT CRA REPORTING REQUIREMENTS.  
AS A REGULATOR I PUT TREMENDOUS VALUE ON THE CRA  
RATINGS. THEY GUIDE MY DECISIONS ON APPLICATIONS FOR  
EXPANSION AND MERGER. THEREFORE, IT IS OF THE UTMOST  
IMPORTANCE THAT INTERSTATE BANKING AND BRANCHING NOT  
IN ANY WAY, SHAPE, OR FORM DILUTE THE CRA LAWS.

AGAIN, THANK YOU CHAIRMAN INVERSO, CHAIRMAN  
LUSTBADER AND MEMBERS OF THE COMMITTEES. I WOULD BE  
GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

# NEW JERSEY BANKERS ASSOCIATION



499 North Harrison Street • Princeton, New Jersey 08540-3571 • 609/924-5550  
Mailing Address: Post Office Box 573, Princeton, New Jersey 08542-0573

PRESIDENT  
ALFRED H. GRIFFITH, C.A.E.

TESTIMONY OF ALFRED H. GRIFFITH  
PRESIDENT, NEW JERSEY BANKERS ASSOCIATION  
INTERSTATE BANKING AND BRANCHING OPTIONS FOR NEW JERSEY  
OCTOBER 24, 1994

IT IS A REAL PLEASURE, AS PRESIDENT OF THE NEW JERSEY BANKERS ASSOCIATION, TO SHARE THE THOUGHTS OF OUR MEMBERS ON WHAT WILL BE ONE OF THE MOST IMPORTANT PIECES OF BANKING LEGISLATION EVER ENACTED IN TRENTON. IT'S GOOD RETURNING BEFORE THE COMMITTEES THAT I ENJOYED SPENDING SOME MANY IMPORTANT YEARS OF MY LIFE. IT WAS BEFORE THESE COMMITTEES IN THE MID-1980s THAT WE CRAFTED AN INTERSTATE BANKING LAW FOR NEW JERSEY THAT HAS WORKED REMARKABLY WELL. IT WAS A WONDERFUL COOPERATIVE EFFORT WITH THE COMMITTEE LEADERSHIP, KEAN ADMINISTRATION AND OUR COMMERCIAL BANK MEMBERSHIP. WE LOOK FORWARD AGAIN TO WORKING COOPERATIVELY ON THIS NEXT CRUCIAL STAGE OF INTERSTATE, NAMELY INTERSTATE BRANCHING.

THE ISSUES WILL BE EVEN MORE COMPLEX COMPARED WITH WHAT WE ACCOMPLISHED IN 1986, BECAUSE WE WILL BE RESPONDING TO CONGRESSIONAL COMPROMISE THIS TIME. LAST TIME WE TOOK THE LEAD AND CONGRESS FOLLOWED. IN FACT, WHAT WE DID IN TRENTON AND A NUMBER OF OTHER STATE CAPITALS, LED TO THE ENACTMENT OF THE FEDERAL ENABLING LEGISLATION.

THE FEDERAL LEGISLATION IS CLEARLY A COMPLEX BUNDLE OF COMPROMISES TO SATISFY A WIDE RANGING NUMBER OF INTERESTS. OTHER THAN THE STATE AND NATIONAL BANKING TRADE ASSOCIATIONS, WHO OFTEN CREATED STALEMATE IN THE AREA OF GEOGRAPHIC EXPANSION, THE LAW WAS THE RESULT OF SOLID LOBBYING EFFORT BY THE STATES, THROUGH THE CSBS, GOVERNOR'S CONFERENCE AND COUNCIL OF STATE LEGISLATURES, WHO WITH ORGANIZATIONS LIKE NJBA, ADVOCATED THE MAINTENANCE OF STATES RIGHTS AND CONTINUATION OF THE DUAL BANKING SYSTEM.

NJBA SHARED THE SAME CONCERN OF THE STATES IN ENSURING THAT THE FEDERAL LAW DID NOT ELIMINATE THE IMPORTANCE OF THE STATE BANK CHARTER, STATE BANKING DEPARTMENTS AND STATE BANKING LAW. WE BELIEVE THAT THE EFFORTS TO PROTECT THE LEGITIMATE AFOREMENTIONED STATE INTERESTS ARE EMBODIED IN THE OPTIONS THAT YOU WILL CONSIDER. HOW WELL WE EXERCISE OUR OPTIONS IN NEW JERSEY STATE LEGISLATION WILL TELL WHETHER OUR JOINT EFFORTS WERE WORTHWHILE.

WHAT CONGRESS ACCOMPLISHED IS ALMOST REVOLUTIONARY. EVEN THOUGH WE ALL KNEW THAT TRUE INTERSTATE BANKING WAS COMING, AND IS IN EFFECT IN NEW JERSEY IN SEVERAL WAYS EVEN WITHOUT THE LAW, WE DID NOT EXPECT TO SEE LANGUAGE THAT MAY HAVE A SIGNIFICANT IMPACT ON OUR BANKS, ITS CUSTOMERS AND OUR STATE. A NUMBER OF ELEVENTH HOUR COMPROMISES, AS CONGRESS TRIED TO BALANCE STATE AND NATIONAL INTERESTS, RAISE A NUMBER OF SIGNIFICANT QUESTIONS THAT WILL NEED TO BE ADDRESSED BY THE

STATE AND NATIONAL REGULATORS, AS WELL AS EACH STATE LEGISLATURE.

THE LEGISLATION IS REVOLUTIONARY IN THAT IT HAS OVERTURNED IN MANY WAYS A BANKING STRUCTURE THAT HAS BEEN IN PLACE SINCE THE EARLY 1900s.

OUR ASSOCIATION HAS 96 COMMERCIAL BANK MEMBERS. ONLY ONE BANK IS NOT A MEMBER. WE HAVE PROUDLY SERVED NEW JERSEY BANKS OF ALL SIZES, CHARTERS AND LOCATIONS SINCE 1903. YOU HAVE RELIED ON OUR REPRESENTATIONS, WHICH HAVE BEEN CAREFULLY CRAFTED FROM CROSS SECTION POLICY MAKING COMMITTEES DESIGNED TO PROVIDE A CONSENSUS VIEW. WITH THAT BACKGROUND, WE WOULD LIKE TO OFFER OUR VIEWS ON A NUMBER OF STATE OPTIONS. BE MINDFUL THAT THE FEDERAL LAW IS ONLY APPLICABLE TO BANKS.

OUR ASSOCIATION HAS CONSISTENTLY AGREED TO SUPPORT INTERSTATE BANKING LEGISLATION AT THE FEDERAL LEVEL **UNDER VERY SPECIFIC CONDITIONS**. OUR SUPPORT FOR THE NEW LAW WAS CONDITIONED ON THE GROUNDS THAT IT PRESERVED STATES RIGHTS (THAT WAS ACCOMPLISHED); **PERMITTED ENTRY INTO A STATE ONLY BY ACQUISITION OF AN EXISTING BANK AND NOT ON A DE NOVO BASIS (THAT WAS ACCOMPLISHED IN THAT THE LAW SPECIFICALLY PROVIDES INTERSTATE BRANCHING BY ACQUISITION ONLY, BUT DOES GIVE THE STATE THE POWER TO OPT-IN TO DE NOVO ENTRY);** THAT TAXATION WOULD BE EQUAL AND FAIR (WE BELIEVE THAT HAS BEEN ACCOMPLISHED) AND THAT THE LAW, UNLIKE SO MANY OTHER

NATIONAL BANKING LAWS, WAS NOT MIRED DOWN WITH SO-CALLED CONSUMERIST PROVISIONS (THAT MAY HAVE BEEN ACCOMPLISHED AS WELL).

THE LAW GIVES THE STATE THE POWER TO REGULATE IN THE COMMUNITY REINVESTMENT, FAIR LENDING, CONSUMER PROTECTION, AND INTRA-STATE BRANCHING AREAS. HOWEVER, ITS STATUTES CANNOT BE DISCRIMINATORY IN ITS APPLICATION TO BANKS AND CAN BE PRE-EMPTED BY FEDERAL LAW. BECAUSE THE NEW LAW PROVIDES COMPETITIVE THREATS AND OPPORTUNITIES FOR ALL STATES AND ALL BANKS, IT IS VITALLY IMPORTANT THAT THERE BE CONSISTENCY IN THE REGULATORY TREATMENT OF BANKS DOING BUSINESS IN NEW JERSEY AND IN OTHER STATES, ESPECIALLY FOR OUR OWN STATE CHARTERED BANKS. IF NOT NEW JERSEY WILL BE UNATTRACTIVE TO THE BANKING MARKETPLACE AND NEW JERSEY BASED BANKS WILL HAVE SERIOUS DISADVANTAGES COMPETING IN OTHER STATES. THE DISADVANTAGES COULD BE SUCH THAT THEY PREFER NOT TO MAKE NEW JERSEY THEIR HOME STATE.

IT IS VITAL THAT THE STATE TAKE A HARD LOOK AT ITS OPTIONS. WE HOPE WE WON'T MAKE THE MISTAKE THE FRAM AUTO FILTER SPONSORS SUGGEST OF PAYING LATER FOR TODAY'S MISTAKES, BECAUSE THE OUTCOME COULD BE IRREVERSIBLE. WE CANNOT SIT BACK AND WATCH WHAT OTHER STATES, WHO ARE ALSO LOOKING FOR BANK HEADQUARTERS LOCATIONS, WILL DO, AND WE DO SUGGEST PLANNING TO BE MORE THAN COMPETITIVE WITH OTHER STATES BY MAKING NEW JERSEY EVEN MORE ATTRACTIVE.

AS AN EXAMPLE, WE RECENTLY TESTIFIED BEFORE THE STATE ECONOMIC MASTER PLAN COMMISSION, WHICH IS DEVELOPING A STRATEGIC PLAN TO MAKE NEW JERSEY MORE COMPETITIVE IN THE BUSINESS ARENA. EVERY GOOD STRATEGIC PLAN MUST INCLUDE AN UNDERSTANDING OF EXTERNAL PRESSURES THAT OFFER THREATS AND OPPORTUNITIES. IT IS NO SECRET THAT A NUMBER OF STATES, ESPECIALLY SOUTHERN STATES, HAVE MADE A NUMBER OF DECISIONS TO ATTRACT NEW JERSEY THE MANUFACTURING BUSINESS AWAY. THEIR SUCCESS HAS MEANT LESS JOBS FOR NEW JERSEY CITIZENS AND LESS TAXABLE INCOME. IT IS INTERESTING TO NOTE THAT MANY OF THE NEW POTENTIAL COLONIZER BANKS, WHICH HAVE GROWN VERY RAPIDLY, ARE FROM THE VERY SAME SOUTH THAT HAS TAKEN OUR JOBS. TO THEIR CREDIT, THE SOUTHERN STATES HAVE HAD A PLAN, HAVE RESISTED ANTI-BUSINESS PRESSURES AND HAVE EXECUTED IT WELL.

ON THE BANKING SIDE IN OUR TESTIMONY TO THE COMMISSION, WE POINTED TO NEIGHBORING DELAWARE, WHICH REVISED ITS STATE BANKING LAW TO MAKE IT MORE ATTRACTIVE FOR LARGER BANKS TO MOVE INTO WILMINGTON, HIRE DELAWARE RESIDENTS, AND NOT COMPETE WITH THE SMALLER DELAWARE BANKS, BY EXPORTING CREDIT CARDS TO OTHER STATES. IRONICALLY WHILE WILMINGTON WAS GROWING AS A FINANCIAL CENTER AND THE STATE BENEFITED, OUR LEGISLATURE BOWED TO THE PRESSURES OF SO-CALLED CONSUMER GROUPS AND THE FORMER PUBLIC ADVOCATE, WHO WANTED TO CAP NEW JERSEY ISSUED CREDIT CARD RATES AND MAKE IT UNATTRACTIVE FOR NEW JERSEY BANKS TO OFFER THE PRODUCT. THE END RESULT WAS

JUST ABOUT EVERY ONE OF THE NEW JERSEY BANKS OFFERING THE PRODUCT SOLD IT TO A DELAWARE BASED BANK. THE RESULT WAS LESS JOBS, ESPECIALLY FOR LESS EDUCATED WORKERS WHO WOULD RECEIVE BETTER THAN AVERAGE INCOME; ELIMINATION OF A ENVIRONMENTALLY CLEAN COMPANY (DEPE NEEDS TO BE FURTHER REINED IN IF NEW JERSEY WANTS TO ATTRACT MORE LARGER BANK HEADQUARTERS) AND LESS TAX REVENUE. A 1993 STUDY INDICATING THE ATTRACTIVENESS OF STATES FOR BANK CREDIT ISSUANCE CITED NEW JERSEY AS 47TH. SINCE THE LEGISLATION OFFERS NEW JERSEY AN OPPORTUNITY TO BE ATTRACTIVE, WHY NOT SEIZE THE MOMENT, AS AN EXAMPLE, IN THE CREDIT CARD AREA?

ANOTHER EXAMPLE IS INSURANCE. SEVERAL STATES HAVE PERMITTED BANKS LOCATED IN THEIR STATE TO OFFER THE FULL RANGE OF INSURANCE PRODUCTS. BANKS HAVE HISTORICALLY OFFERED SEVERAL LINES OF INSURANCE ECONOMICALLY AND EFFECTIVELY. MANY INSURANCE COMPANIES ARE INTO BANKING IN A BIG WAY. EVEN NEW JERSEY'S PRUDENTIAL INSURANCE COMPANY HAS A BANK OF ITS OWN AND JUST HIRED A FORMER BANKER TO RUN THE COMPANY. INSURANCE AGENTS CLAIM THAT BANKS COERCE CUSTOMERS TO TAKE THEIR INSURANCE AS A LOAN CONDITION, YET THERE IS NO EVIDENCE THIS IS TRUE. AND THERE ARE MECHANISMS AGAINST BANKS WHO MIGHT COERCE. WHY SHOULDN'T NEW JERSEY, CONSIDERING ITS EXCELLENT LOCATION, PROVIDE AN OPPORTUNITY FOR ITS BANKS TO OFFER INSURANCE?

WE APPLAUD COMMISSIONER RANDALL'S DESIRE TO MAKE NEW JERSEY ATTRACTIVE TO BANK HEADQUARTERS. WE VERY MUCH WANT NEW JERSEY TO HAVE SOME LARGE NEW JERSEY BASED BANKS. ONE CONCERN THAT HAS BEEN RAISED BY CRITICS OF THE LAW IS WHAT HAPPENS TO THOSE STATES THAT WIND UP WITH NO LARGE BANKS HEADQUARTERED IN THE STATE? REMEMBER WHEN A FEW NEW JERSEY BANKS ASSISTED THE STATE IN SECURING THE MEADOWLANDS WHEN THE LARGEST NEW YORK STATE BANKS DECIDED TO WALK AWAY? WHAT MIGHT HAPPEN IF NEW JERSEY NEEDS THIS TYPE OF SUPPORT AGAIN AND FEW, OF ANY OF OUR LARGEST BANKS, ARE NOT HEADQUARTERED HERE? CRITICS OF THE LAW CLAIM THAT THE LARGEST BANKS WILL CONCENTRATE THE RESOURCES THEY RECEIVE FROM THEIR INTERSTATE NETWORKS INTO THE BUSINESSES OF THEIR HOME STATE, WHERE THEY HAVE THEIR CEO, CHAIRMAN, BOARD AND BUSINESS TIES? WILL THAT HAPPEN AND WHAT WOULD THAT MEAN FOR NEW JERSEY?

WE WANT OUR STATE'S NEEDS TO BE TREATED EFFECTIVELY BY THOSE BANKS WHO HAVE THE SIZE AND CAPACITY TO DO IT. WE HAVE A UNIQUE OPPORTUNITY TO MAKE OUR STATE ATTRACTIVE TO BANKING AND ECONOMIC DEVELOPMENT. WE SHOULD CAPITALIZE ON THE OPPORTUNITY. **HOWEVER, IF WE MAKE THE SAME MISTAKE OF PANDERING TO SO-CALLED CONSUMER GROUPS AND OTHER INTERESTS WHO DO NOT WANT TO COMPETE WITH BANKS, THEN WE WILL MISS OUR UNIQUE OPPORTUNITY TO OTHER STATES. WE WILL LOSE AN OPPORTUNITY WE MAY NEVER HAVE AGAIN!**

**PASSAGE OF PROGRESSIVE LEGISLATION IS PARTICULARLY IMPORTANT TO OUR STATE CHARTERED BANKS. WE WILL NEED TO INCLUDE ENABLING PROVISIONS AFFECTING NEW JERSEY STATE CHARTERED BANKS, WHICH CONSIDERS THEIR COMPETITIVE OPPORTUNITIES IN OTHER STATES. STATE CHARTERED NEW JERSEY BANKS, COMPETING IN OTHER STATES, WILL NOT BE ABLE TO ENGAGE IN THE SAME COMPETITIVE ACTIVITIES IN THOSE STATES, UNLESS THEY HAVE THE SAME AUTHORITY UNDER NEW JERSEY LAW. WE FOUGHT HARD TO RETAIN THE STATE BANKING SYSTEM AND STATE BANKS; HOWEVER, OUR EFFORT COULD BE FRUITLESS IF NEW JERSEY'S STATE CHARTERED BANKS DO NOT HAVE COMPETITIVE TOOLS ELSEWHERE.**

**THE NEW LAW PERMITS BRANCHING THROUGH EITHER THE ACQUISITION OF AN EXISTING BANK OR BRANCH OF A BANK, OR, IN ADDITION, THROUGH DE NOVO ENTRY, WHICH MEANS AN OUT-OF-STATE BANK WOULD ONLY HAVE TO GET PERMISSION TO OPEN A BRANCH AS A CONDITION OF ENTRY INTO OUR STATE. OUR ASSOCIATION STRONGLY SUPPORTS BRANCHING ONLY THROUGH THE ACQUISITION OF A BANK. OUR MEMBERS VEHEMENTLY OPPOSE ACQUISITION OF A BRANCH ONLY OF A BANK AND DE NOVO ENTRY.**

**NEW JERSEY MAY EITHER OPT-OUT OF INTERSTATE BRANCHING OR OPT-IN, EITHER BEFORE OR BY JUNE 1, 1997. PRESSURES ARE ALREADY BEGINNING IN SOME STATES, STARTING WITH TEXAS, TO OPT OUT. THE COMMUNITY BANKS OF TEXAS, A STATE THAT HAS LOST MOST OF ITS OWN LARGE TEXAS BASED BANKS, IS PREPARING TO CONVINCE THE TEXAS LEGISLATURE TO ENTIRELY PREVENT BRANCHING BY OUT OF**

STATE BANKS. IT IS TOO EARLY TO TELL HOW MANY STATES WILL OPT-  
OUT, BUT THE FEARS OF MID-SIZED AND COMMUNITY BANKS BEING  
GOBBLED UP OR PUT OUT OF BUSINESS BY MUCH LARGER MONEY  
CENTER, FOREIGN AND SUPER-REGIONAL BANKS ARE REAL TO MANY  
BANKS.

OF OUR 96 BANKS, FIFTEEN BANKS ARE IN EXCESS OF 1 BILLION DOLLARS  
IN ASSETS (BANKING COMMENTATORS CLAIM THAT BANKS IN THIS  
RANGE MAY BE THE MOST ATTRACTIVE ACQUISITION TARGETS) AND THE  
BALANCE ARE UNDER \$500 MILLION. TWO-THIRDS OF OUR MEMBERS ARE  
COMMUNITY BANKS BELOW \$250 MILLION AND FORTY PERCENT OF OUR  
BANKS ARE UNDER \$100 MILLION.

WHILE OUR COMMUNITY BANKS CLAIM THAT THEY FIND THE LARGEST  
BANKS THEIR BEST COMPETITION, THEY ALSO ACKNOWLEDGE THAT IF  
LARGER BANKS WANT TO CUT INTO THEIR MARKET, THEY CAN, WITH  
THEIR SIGNIFICANTLY GREATER RESOURCES, SUBSTANTIALLY  
UNDERCUT THEM IN THE MARKET. WE ALSO HEAR CONCERNS LIKE THIS  
IN THE RETAIL SECTOR IN SEVERAL PARTS OF THE STATE WHEN  
NATIONAL CHAINS, SUCH AS WALMART, PLANS TO MAKE ITS ENTRY INTO  
A NEIGHBORHOOD.

KAREN SHAW, A PROMINENT WASHINGTON SPECIALIST, INDICATES THAT  
THE NEW LAW WILL DRASTICALLY CHANGE THE WAY BANKS AND THEIR  
BOARDS FUNCTION. SHE CLAIMS THE NEW LAW WILL FINALLY TRIGGER A  
BANK'S DECISION TO BUY OR BE BOUGHT. BOARD MEMBERS, WATCHING  
THE RAPIDLY CHANGING DEVELOPMENTS AT THIS TIME, MAY NOT BE

WILLING TO ACCEPT A LESS THAN VERY PROFITABLE SCENARIO ANY MORE.

COMMUNITY BANKS WILL NEED TO MAKE SIGNIFICANT JUDGMENTS ON WHETHER THEY SHOULD COMMIT MORE TO TECHNOLOGY AND THE INCREASINGLY OVERWHELMING REGULATORY PRESSURES THEY FACE.

THE COST OF COMPLIANCE, WHETHER IT BE COMMUNITY REINVESTMENT, FAIR LENDING OR OTHER FORMS OF CONSUMER COMPLIANCE IS TAKING A MAJOR TOLL ON ALL BANKS, BUT ESPECIALLY COMMUNITY BANKS WITH SMALL STAFFS. THESE EXPENSIVE AND TIME CONSUMING REQUIREMENTS ARE NOT REQUIRED OF ANY OF BANKING'S MAJOR NON-BANK COMPETITORS WHO ARE NOW IN BANKING'S MAJOR PRODUCT MARKET. IT IS NO ACCIDENT THAT BANKING'S MARKETSHARE OF LOANS HAS DROPPED FROM 40% TO 23% IN THE LAST 10 YEARS. COMMUNITY GROUPS, SUCH AS NEW JERSEY CITIZEN ACTION, HAVE BEEN NOTICEABLY SILENT IN NEW JERSEY IN PRESSING THE LEGISLATURE TO REQUIRE THAT EVERYONE WHO LENDS BE SUBJECT TO THE SAME REGULATORY REQUIREMENTS THEY HOLD SO DEAR FOR BANKS. WHY HAVEN'T THEY? WE SHOULD ASK WHY THEY HAVEN'T?

AT THIS POINT, MOST OF OUR 80 COMMUNITY BANKS AND THEIR BOARDS APPEAR TO BE RELUCTANTLY AGREEING TO SUPPORT OPT-IN. HOWEVER, HOW THE STATE'S BILL IS SHAPED MAY CHANGE THEIR PRESENT VIEW, SINCE THERE ARE A NUMBER OF OPTION DECISIONS TO BE MADE. MOST COMMUNITY BANKS DO NOT PLAN TO EXPAND ACROSS STATE

BOUNDARY LINES AND SEE LITTLE TO BE GAINED FROM WHAT THEY BELIEVE TO BE A LAW TO BENEFIT THE NATION'S LARGEST BANKS.

HOWEVER, THEY AND NJBA VEHEMENTLY OPPOSE "'DE NOVO" BRANCHING ENTRY BY OUT-OF-STATE BANKS. IN FACT, NJBA'S BOARD HAS ALWAYS OPPOSED DE NOVO BRANCHING ENTRY. CONGRESS CHOSE TO ALLOW ENTRY BY ACQUISITION UNLESS A STATE DELIBERATELY WANTED TO OPT-IN FOR DE NOVO. WE BELIEVE THAT DE NOVO BRANCHING WOULD SEVERELY MINIMIZE THE FRANCHISE VALUE OF OUR NEW JERSEY BANKS. DE NOVO BRANCHING COULD ADVERSELY IMPACT OUR BANKS, THEIR EMPLOYEES, THEIR DIRECTORS, STOCKHOLDERS, CONSUMERS AND BORROWERS DEPENDING ON THEIR SERVICES.

DE NOVO BRANCHING COULD LEAD TO A HIGHLY UNREGULATED BANKING ENVIRONMENT WHERE THE SAFETY AND SOUNDNESS OF NEW JERSEY BANKS MIGHT BE JEOPARDIZED.

THE BANKING DEPARTMENT MIGHT HAVE A DIFFICULT TIME TRYING TO REGULATE AND CONTROL THE AMOUNT OF DE NOVO ENTRY AND IT APPEARS FROM THE FEDERAL LAW AS THOUGH THE DEPARTMENT COULD NOT BE TOO DISCRIMINATORY IN ITS DE NOVO DECISIONS.

THE CONFERENCE OF STATE BANK SUPERVISORS SUGGESTS, AND WE AGREE, THAT THE FOLLOWING FACTORS BE CONSIDERED, IF A STATE SPECIFICALLY CHOOSES TO USE THE DE NOVO OPTION. THE STATE SHOULD LOOK AT THE NUMBER OF FINANCIAL INSTITUTIONS LOCATED IN THE STATE. WE WOULD ASK IF NEW JERSEY ISN'T PRESENTLY

OVERBANKED? HOW MANY FINANCIAL INSTITUTIONS DO WE HAVE RELATIVE TO OUR POPULATION? HOW MANY OUT-OF-STATE FINANCIAL INSTITUTION LOAN PRODUCTION OFFICES EXIST IN ADDITION TO THE NUMBER OF REGISTERED DEPOSITORY INSTITUTIONS IN THE STATE? WE WOULD ASK IF THERE ARE CERTAIN AREAS OF THE STATE THAT ARE PARTICULARLY OVERBANKED? THE FEDERAL LAW CONSISTENTLY PROVIDES THAT STATES AVOID DISCRIMINATION. HOW MIGHT THIS APPLY TO THE APPROVAL OF DE NOVO BRANCHES IN CERTAIN OVERBANKED AREAS OF THE STATE?

CSBS SUGGESTS THAT STATES LOOK AT THE AVAILABILITY OF MARKETSHARE AND THE CURRENT LEVEL OF BANK SERVICES. WE WOULD ASK IF OUR LARGE NUMBER OF FINANCIAL INSTITUTIONS ARE PROVIDING THE FULL RANGE OF NECESSARY BANKING SERVICES IN THE STATE? IS THERE ENOUGH COMPETITION?

CSBS ALSO SUGGESTS THAT STATES LOOK AT THE IMPACT ON EXISTING INSTITUTIONS IN THE STATE. WE BELIEVE THAT THIS IS A PARTICULARLY IMPORTANT POINT! WHAT IMPACT WOULD DE NOVO ENTRY HAVE ON SHAREHOLDER VALUE, THE SAFETY AND SOUNDNESS OF EXISTING BANKS, ETC. HOW DOES NEW JERSEY BANK EARNINGS AND THE VALUE OF NEW JERSEY BANK STOCK COMPARE WITH OTHER STATES? WHILE CERTAIN COMMUNITIES MAY DECIDE TO ALLOW A WALMART ENTRY OVER THE OBJECTIONS AND CONCERNS OF SMALLER BUSINESSES, BANKS ARE DRAMATICALLY DIFFERENT FROM RETAIL OPERATIONS BECAUSE THEY ARE HIGHLY REGULATED BUSINESSES, HAVE A MAJOR OVERALL ECONOMIC IMPACT AND THE PUBLIC INTEREST REQUIRES THAT THEY BE

SAFE AND SOUND. PREVIOUS EFFORTS TO KEEP BANKS OUT OF COMPETITION, WHILE OFTEN COUNTERPRODUCTIVE, WERE BUILT ON PUBLIC CONCERN ABOUT THEIR IMPORTANCE AND FINANCIAL HEALTH..

**OUR MEMBERS FEEL VERY STRONGLY ABOUT THE DE NOVO ENTRY ISSUE AND RESPECTFULLY ASK THAT THE LEGISLATURE AND WHITMAN ADMINISTRATION NOT OPT-IN FOR DE NOVO ENTRY.**

THE COMMITTEE HAS ASKED FOR OUR VIEWS ON FOREIGN BANK ENTRY. THE NEW LAW PERMITS FOREIGN BANK ENTRY BY ACQUISITION OR ON A DE NOVO BASIS UNDER CERTAIN CIRCUMSTANCES, INCLUDING A NON-DISCRIMINATORY BASIS COMPARED WITH DOMESTIC BANKS.

THE NEW JERSEY LEGISLATURE HAS NOT ENACTED SPECIFIC LEGISLATION, DESPITE SEVERAL ATTEMPTS, TO ALLOW DIRECT FOREIGN BANK ENTRY. THE LEGISLATURE HAS BEEN UNWILLING TO ALLOW FOREIGN BANK ENTRY, UNLESS THEY ALLOW AMERICAN BANKS IN THEIR COUNTRY UNDER RECIPROCAL CIRCUMSTANCES AND THEY COMPETE ON THE SAME REGULATORY BASIS AS BANKS.

CONGRESS WILL TAKE UP "NATIONAL TREATMENT IN BANKING ACT" NEXT YEAR. AN ELEVENTH HOUR REACTION TO THE FOREIGN BANKING CONTROVERSY WITHIN THE INTERSTATE BILL ITSELF, THE BILL, AFFECTING BANKS ONLY, WAS SPLIT AWAY FROM ANOTHER MORE COMPREHENSIVE FOREIGN FINANCIAL SERVICES FAIRNESS BILL THAT HAD CONGRESSIONAL COMMITTEE JURISDICTIONAL PROBLEMS. THE BILL DID PASS THE HOUSE IN SHORT ORDER, BUT GOT TIED UP IN THE

CONCLUDING STALEMATE PERIOD. THE BILL WOULD GIVE THE TREASURY THE POWER TO RETALIATE AGAINST FOREIGN BANKS FROM NATIONS THAT FAIL TO GIVE AMERICAN BANKS EQUAL TREATMENT.

IT IS IRONIC THAT THIS ISSUE SHOULD COME UP AT THIS TIME SINCE CONGRESS MOVED ON THE INTERSTATE LEGISLATION AS A MEANS OF ALLOWING AMERICAN BANKS TO DEVELOP A NATIONWIDE NETWORK TO BECOME LARGE ENOUGH TO COMPETE WITH FOREIGN BANKS. OF THE 30 LARGEST BANKS IN THE WORLD, CITICORP IS THE ONLY AMERICAN BANK AND IT IS 29TH. NINE OF THE WORLD'S 10 LARGEST BANKS ARE JAPANESE. ARE THEIR BANKING LAWS RECIPROCAL?

WE WOULD RECOMMEND THAT THE FOREIGN BANKING OPTION BE SET ASIDE AT THIS TIME TO AWAIT CONGRESSIONAL ACTION ON THE RECIPROCITY AND COMPETITIVE FAIRNESS ISSUES. THERE ARE VERY STRONG EMOTIONAL, POLITICAL AND ECONOMIC FEELINGS ON THESE ISSUES AND IT WOULD BE A SHAME TO DELAY THE IMPORTANT STATE LEGISLATIVE DECISIONS BEFORE US ON DOMESTIC BRANCHING.

THE COMMITTEE MUST ALSO CONSIDER WHETHER WE SHOULD OPT-IN BY JUNE 1, 1997 OR EARLIER. THE PROS AND CONS SHOULD BE EVALUATED AND THE SHORT AND LONG TERM IMPACT OF THE NEW LAW BE CONSIDERED.

THERE ARE CLEAR CUT DIFFERENCES OF OPINION ABOUT THE VALUE AND IMPACT OF THE NEW LAW. IT HAS BEEN ARGUED THAT INTERSTATE BANKING AND BRANCHING WILL INCREASE BANK EFFICIENCY, IMPROVE

A BANK'S PORTFOLIO MIX, INCREASE CREDIT AVAILABILITY, IMPROVE CUSTOMER SERVICE AND WILL LEAD TO GREATER COMPETITION.

OTHERS ARGUE THAT THE NEW LAW COULD LEAD TO INFERIOR AND LESS PERSONALIZED SERVICE, DEPOSIT OUTFLOWS FROM CERTAIN STATES, INCREASED UNEMPLOYMENT, SIGNIFICANT ADVANTAGES FOR LARGER BANKS OVER SMALLER BANKS, ETC.

INTERSTATE BANKING'S POSITIVE AND NEGATIVE IMPACT MAY BE GREATER IN SOME PARTS OF THE COUNTRY COMPARED WITH OTHERS. WE CAN ALREADY FIND STATES THAT HAVE VERY FEW LOCAL BANKS. JAMES NORTH WROTE IN BARRONS THAT NATIONWIDE WIDE BANKING MAY MAKE SOME STATES "HAVES" (HE CALLS THEM COLONIZERS) AT THE EXPENSE OF OTHER STATES, WHO HE DEFINES AS COLONIES OR "HAVE NOTS."

DO WE REALLY KNOW WHAT NEW JERSEY WILL BE? CAN WE PLAN NOW TO BE A COLONIZER OR WILL WE ALLOW OURSELVES TO BE A COLONY OF OTHER STATES? EVERY STATE WILL BE ASKING THE SAME QUESTION AND HOW WE AND THEY RESPOND WILL BE VERY TELLING.

WE KNOW THAT COMMISSIONER RANDALL WILL BE TAKING THE LEAD ON THIS ISSUE. WE VERY MUCH APPLAUD HER FOR HER LEADERSHIP AND EFFORT. HER EXPERIENCES IN A PREVIOUS ADMINISTRATION AND AS ONE OF YOUR PREDECESSORS GIVE US AN EXCELLENT FOUNDATION. WE VERY MUCH LOOK FORWARD TO WORKING COOPERATIVELY WITH HER

AND YOU TO ARRIVE AT A PIECE OF LEGISLATION THAT WILL SERVE OUR  
STATE AND ITS BANKS WELL.

THANKS FOR THE OPPORTUNITY TO TESTIFY.

# NEW JERSEY BANKERS ASSOCIATION



499 North Harrison Street • Princeton, New Jersey 08540-3571 • 609/924-5550  
Mailing Address: Post Office Box 573, Princeton, New Jersey 08542-0573

PRESIDENT  
ALFRED H. GRIFFITH, C.A.E.

## NJBA TESTIFIES ON NEW JERSEY INTERSTATE BANKING AND BRANCHING OPTIONS October 24, 1994

NJBA President Al Griffith told a joint state legislative committee in Trenton that the new federal interstate banking and branching law provides state options **that can either lead New Jersey into an attractive banking marketplace or a "have not" colony of major out-of-state banks.** The new law provides a one time unique opportunity for New Jersey to show how business friendly it can be. As an example, opportunities in the banking area, along with jobs and tax income, have been lost in the past as our credit card business went to Delaware. The South has also benefited in the state's non-banking area at the expense of manufacturing and related jobs from the state's willingness to give in to undue environmentalist and other related pressures.

Griffith applauded the interest of Banking Commissioner Randall in seeking to make New Jersey attractive as a headquarters location to out-of-state institutions. This can only be accomplished by making a number state legislative changes that allows New Jersey to have a competitive advantage, without harming New Jersey's existing banks. Since New Jersey's state chartered banks, doing business in other states, can only engage in activities authorized by New Jersey there, it is vitally important that our state banks have the same opportunities in other states that their competition would have there.

But while NJBA supports orderly out-of-state bank entry only through the acquisition of an existing bank (and not its branch), **NJBA vehemently opposes de novo entry, where an out-of-state bank only has to meet the requirements of opening a branch as a condition of entry into the state.** Such ease of entry could seriously undermine the franchise value of New Jersey's banks, which are already in a major competitive battle. If the Legislature desires to consider the de novo option, NJBA suggests that the Legislature look at the **number of existing financial institutions, the degree of competition, marketshare, the existing value of banks and their stock compared to other states, and, especially, the financial impact of de novo entry on the health of existing banks, their stockholders and customers.**

Griffith indicated that most of New Jersey's 80 community banks even reluctantly support New Jersey's opting in to interstate branching, since they see little value in a law that primarily allows larger banks to compete nationally and internationally. There will be a number of states, beginning with Texas, seriously considering opting-out entirely of the

legislation. Knowing the compromise process, they will go along as long as de novo and acquisition of only a branch is not a state option.

If the Legislature gives in to new and additional so-called consumerist pressures, as it has, unlike other states before, especially when other competing states will not, it not only would harm the competitive position of New Jersey banks, but make the state very unattractive to out-of-state banks. Organizations like Citizen Action bend over backwards to expand the Community Reinvestment and Fair Lending requirements on banks, but are noticeably silent in their efforts to require the same treatment in Trenton for banking's non-bank competitors, who have significantly expanded their share of the lending pie at the expense of banks.

NJBA suggests that the issue of foreign bank entry be postponed until a federal foreign bank reciprocity bill is approved and the impact of foreign bank entry be explored. The foreign bank issue has been very controversial in the past in Trenton and it would be a shame to make the necessary changes in domestic banking law captive to the foreign bank issue. After all, Congress authorized national interstate banking to allow American banks to finally reach the size where they can compete with the world's largest banks.

NJBA warned that New Jersey's law must be attractive enough to encourage at least some larger banks to be headquartered in the state. Critics claim that the new law could lead to "have" and "have not" states, with some being "colonizers" and others being "colonies." It has been argued that the nationwide banks would use the new law as a principal source for revenue for their traditional home states, or even, due to their size, abroad. Whether that is true or not, it appears as though New Jersey should have banks of sufficient size to be sure New Jersey is competitive with other states in the area of state economic development.

NJBA looks forward to working with the Banking Department and Legislature to craft a compromise bill that will satisfy all legitimate interests and allow the State's interests to be met.

TESTIMONY OF RICHARD F. OBER, JR.  
EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL  
AND SECRETARY  
UNITED JERSEY BANK  
BEFORE THE  
SENATE STATE MANAGEMENT, INVESTMENTS  
AND FINANCIAL INSTITUTIONS COMMITTEE  
AND THE ASSEMBLY  
FINANCIAL INSTITUTIONS COMMITTEE

October 24, 1994

Good morning, Senators and Assemblypersons. Thank you for the opportunity to testify today. My name is Rick Ober, and I have been General Counsel at United Jersey Banks for the last 19 years. It that time, I have seen enormous changes in the banking industry in New Jersey. I believe that we have reached a watershed, a critical juncture in banking in New Jersey. My purpose is to speak about the differential impact of the Interstate Banking Act on national versus New Jersey State-chartered banks, from the perspective of New Jersey's largest State-chartered bank. We haven't had great success in making the New Jersey State charter attractive. According to the New Jersey Commissioner of Banking's 1993 Annual Report, State-chartered commercial banks held \$27.1 billion in assets, while national banks held \$73.2 billion in assets in New Jersey.

United Jersey made the decision to be a State-chartered bank about a year ago, when we announced plans to merge UJB Financial Corp.'s two national banks into its State-chartered bank. That merger could have gone either way, but we felt that the advantages of a State charter in terms of flexibility, local responsiveness and somewhat lower examination costs outweighed that of a national charter, unlike our competitors at First Fidelity, Midlantic, Natwest, CoreStates New Jersey National, and others. This does, however, mean that we are examined by both the Federal Reserve Bank of New York and the New Jersey Department of Banking, while national banks have only the Comptroller of the Currency examiners.

But a new factor has entered the equation, the so-called Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. This Act is seriously prejudicial to State-chartered banks, and threatens the dual banking system. I will explain why. First, two definitions, found in Section 101(c) of the Interstate Banking Act. The "Home State" of a national bank is defined as the State where the main office of the bank is located, and for a State bank, the State by which the bank is chartered, in our case New Jersey. A "Host State" is a State other than its Home State in which a bank maintains or seeks to establish a branch.

Section 102(b) provides that, for a national bank, the laws of the Host State regarding community reinvestment, fair lending, and establishment of intrastate branches shall apply to any branch in the Host State of an out-of-state national bank, except where preempted by Federal law, and other Host State laws will apply to a branch of an out-of-state national bank to the same extent as if it was an in-state national bank. What this means from a practical point of view is

that national banks have successfully persuaded the Comptroller of the Currency to preempt virtually every New Jersey banking law which the State has sought to apply to national banks in the past, such as our Lifeline Checking Account Law and our Home Mortgage Disclosure Law. Your Banking Department staff can confirm this for you. That situation is unchanged by this Act. National banks will look to the Federal banking laws.

State-chartered banks, on the other hand, are hit with a double whammy. The Act states that all the laws of a Host State, such as New York, if UJB wanted to branch into New York, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the Host State of an out-of-state State bank. But of course, since UJB is a New Jersey State-chartered bank, New Jersey laws will also apply to that branch. So a State bank branch in another State will be subject to both the laws of its Home State and its Host State, as well as the Federal banking laws, and, in effect, will have to abide by the most restrictive of the three laws on every point. Instead of one set of laws on every question, a State-chartered bank will have three sets of laws. Hypothetically, if we were to merge our Pennsylvania and New Jersey State-chartered banks under the New Jersey charter, the branches in Pennsylvania would have to follow Federal Regulation O, the Pennsylvania law, and the New Jersey law with regard to loans to directors and officers. These laws are similar, but some aspect of each is different enough to make bank lawyers tear out their hair. For example, in trying to determine whether the insider loan limits apply to a loan to a partnership in which a director is a partner, the Federal regulation includes partnerships in which a director owns 25% or more of the voting securities, and probably excludes limited partnership interests. The New

Jersey law includes any partnership, general or limited, no matter how small the interest of the director-partner. Pennsylvania includes only partnerships where the partner is a general partner. So in this case the Pennsylvania branch would have to follow the New Jersey law including limited partnerships, and would be competitively disadvantaged to other Pennsylvania banks.

Now what can the New Jersey Legislature do to help its State-chartered banks, and to persuade them and other State-chartered banks in neighboring States to choose the New Jersey charter? Do we care whether banks locate in New Jersey? Take a trip to Wilmington. What signs do you see on banks there: Chase Manhattan, Chemical, Citibank, Morgan, Bank of New York, and lots of others who left New York and other States because of our misguided usury laws. The whole credit card industry in New York City packed up, drove down the New Jersey Turnpike, paid us a few bucks in tolls, crossed into Delaware, and settled down. I'm sure Delaware legislators would be happy to tell you about the many new jobs and prosperity that resulted from this. What an opportunity lost by New Jersey! What an opportunity lost for New Jersey!. A list of those banks opened by out-of-state financial organizations in Delaware to issue credit cards appears on page 9 of my testimony. Meanwhile, New Jersey banks like Midlantic and United Jersey sold their credit card businesses to out-of-state organizations. We not only failed to gain jobs, we lost them. Have we protected New Jersey consumers by putting a cap on credit card interest rates for cards issued by New Jersey banks? Look in your wallets, most of you are paying out-of-state interest rates to out-of-state banks.

When I said we are at a critical juncture, I meant that this is probably the last chance to capture a significant movement of financial institution headquarters, a movement which will take place over the next two and a half years as banking organizations choose their Home States. The big banks in this area are not all national banks. There are quite a number of State-chartered banks in neighboring States: Bank of New York, Bankers Trust, Chemical, Marine Midland, Morgan Guaranty, Meridian, Wilmington Trust, to name a few from the list on page 10. Chemical and Bank of New York (both of whose New Jersey affiliates are national banks), and Meridian, which owns United Counties Trust Company, which I believe is the sixth-largest State-chartered bank, among the State banks, and CoreStates, First Fidelity, Midlantic, PNC Financial, and Natwest among the national banks, already have branches in New Jersey and a neighboring State and will be deciding on, or choosing to change, their Home State under the Interstate Banking Act in the next few years. To the extent that any of them, or UJB, wishes to merge its banks in different States into a single State-chartered entity, a decision will be made based on the advice of their lawyers as to which State is the most favorable, provides the most opportunity, and the least burden. It is the last item, the multi-state burden of three sets of laws, that may be the critical factor. That analysis will be done across the board for the multitude of duplicative and overlapping and burdensome statutes and regulations, starting with the usury laws. There is no legal requirement or other reason to force any organization to choose as its Home State a State where it has most of its loans and deposits. A bank could choose as its Home State one in which it had a single branch, if that was the least burdensome.

Assume a bank holding company with banks in New York, New Jersey, Pennsylvania and Delaware. There is an extensive Federal branch closing law, requiring notices, studies, et cetera. Assume that New York has its own complex and duplicative branch closing law, with different notice periods and publication rules, New Jersey has a somewhat less burdensome one, and Pennsylvania and Delaware find the Federal law sufficient and do not have additional State laws on the subject. Which State would that holding company choose to be its Home State? Look at the top chart on page 11 of my testimony. If that banker picked New Jersey, the branches in New Jersey would have Federal and New Jersey law, the branches in New York would have Federal, New York and New Jersey law, and the branches in Pennsylvania and Delaware would have Federal and New Jersey law. I think that banker is likely to pick Delaware or Pennsylvania. That way, as shown on the bottom half of the chart, the branches in New York would be stuck with both Federal and New York law, the branches in New Jersey would have Federal and New Jersey law, and the branches in Pennsylvania and Delaware would have only Federal law. In this example, you'd have to be crazy to pick New Jersey for your charter, or Home State!

Governor Whitman stated in her campaign that she was opposed to duplicative, overlapping, and sometimes conflicting Federal and State laws. According to the American Banker of Wednesday, October 19, 1994, "New Jersey state banks will **not** face rules that are more stringent than federal regulations, the [New Jersey Banking] department pledges." Well, I'm here to tell you that the burden of New Jersey banking laws which overlap, duplicate and conflict with Federal banking laws is substantial, and the only way we're going to make the New Jersey charter attractive is to get rid of them, and rely on enforcing the

applicable Federal laws. Some of these State laws were passed before there were Federal laws on the subject, some were passed before FDICIA subjected all State banks to virtually all Federal banking laws, and a very few may have been passed just to look good to some long-retired legislator's constituents. The national banks have ignored them, with the Comptroller and Congress's backing. The New Jersey State-chartered banks have suffered with the additional costs and delays they produce. New Jersey can no longer afford this overlapping and duplicative regulatory burden. In order to make New Jersey an attractive State, we need to repeal those laws.

I have included in my written testimony summaries of thirteen of those New Jersey laws that should be repealed, together with the parallel Federal laws. I have made one copy of the State and Federal laws, but not all the regulations behind them, for the Legislative staff or the Banking Commissioner, as you see fit. Working with the Banking Commissioner, we will find more in the next few months. The U.S. Congress passed a regulatory relief act, the Reigle Community Development and Regulatory Improvement Act of 1994, at the same time as it passed interstate banking. I call on the New Jersey Legislature to do likewise.

Lest you feel that New Jersey residents will be unprotected if we eliminate some **duplicative and redundant** State laws, I display for you, in addition to the two maroon **volumes** of New Jersey laws and regulations applicable to our New Jersey bank, the four blue volumes of the Federal Reserve Regulatory Service, containing the Federal laws and regulations applicable to our bank which, I assure you, provide extensive protections to our residents.

No banker will voluntarily choose among several State regulatory structures the most burdensome to put in his or her briefcase and carry to branches in another State. Organizations will be merging their banks in multiple States in 1997, sooner if New Jersey opts in early, and they'll be choosing a Home State. Your actions, or inaction, in the next few months will determine if many, or any banks choose New Jersey. Thank you again for the opportunity to testify. I will try to answer any questions you may have.

rfointerstate:testimon

## **DELAWARE BANKS**

### **Owned by Out-of-State Institutions**

Colonial National Bank USA  
NationsBank, N.A.  
J.C. Penney Card Bank, N.A.  
J.C. Penney National Bank  
First Omni Bank, N.A.  
Boatmens Bank of Delaware  
Citibank - Delaware  
Discover Card Bank  
First National Bank of Atlanta  
Greenwood Trust Co.  
United Missouri Bank USA  
American Express Centurion  
MBNA American Bank, N.A.  
Primerica Bank  
Primerica Bank USA  
Baltimore Trust Co.  
Associates National Bank  
PNC Bank, Delaware  
Bank of New York, Delaware  
Bankers Trust Delaware  
Beneficial National Bank  
Beneficial National Bank USA

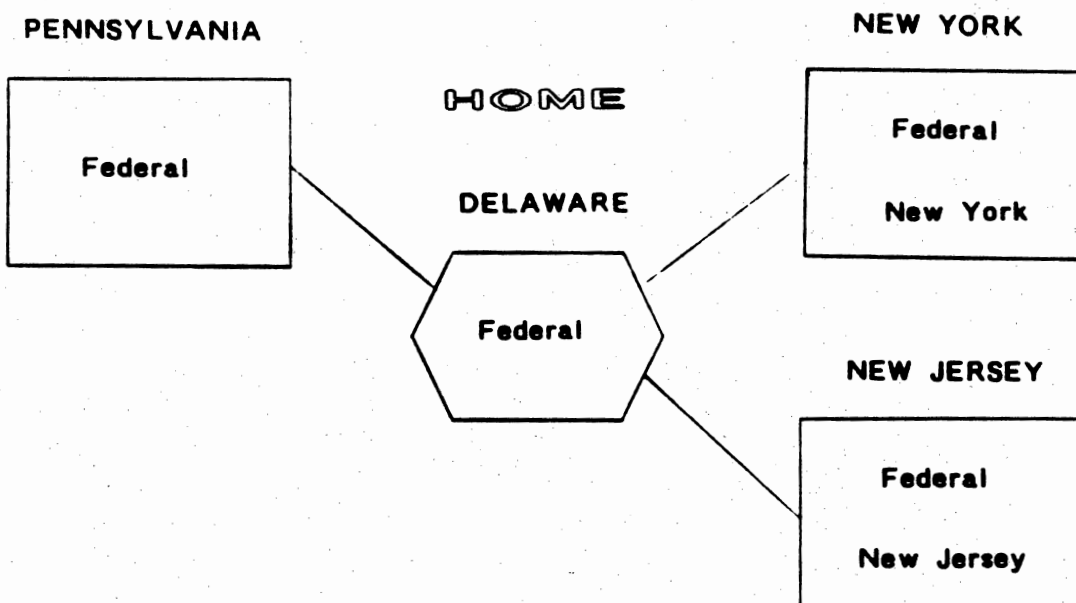
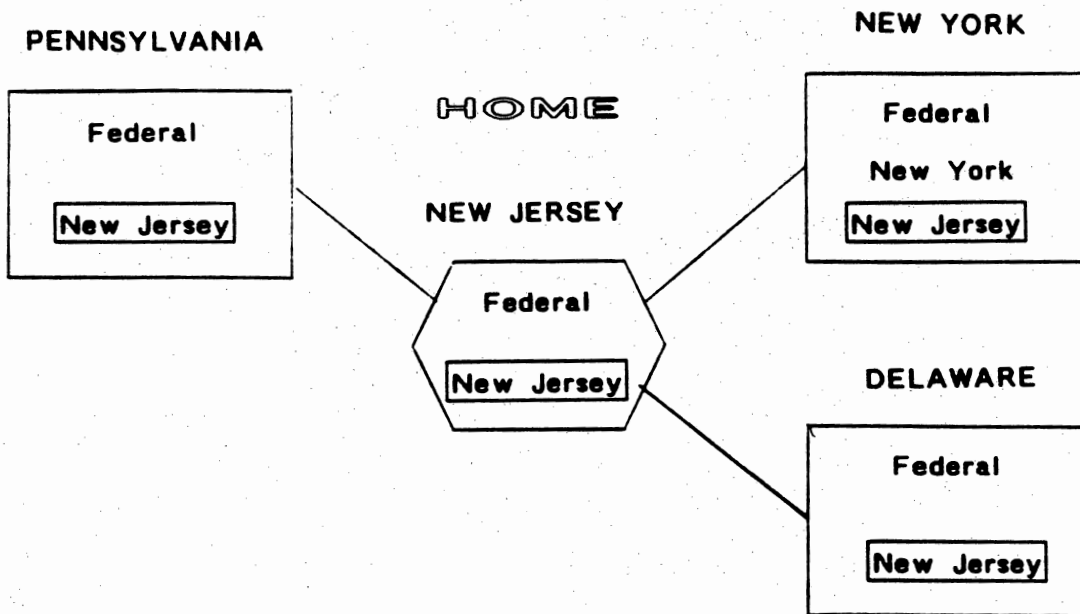
Chase Manhattan Bank USA  
Chemical Bank Delaware  
Corestates Bank of Delaware, N.A.  
FCC National Bank  
First USA Bank  
J.P. Morgan - Delaware  
Mellon Bank Delaware, N.A.

## **SELECTED STATE CHARTERED BANKS**

	<b><u>Assets</u></b> <b><u>(\$ billions)</u></b>
<b><u>New York</u></b>	
Bank of New York	38.9
Bankers Trust	73.4
Chemical Bank	132.7
Marine Midland Bank	16.8
Morgan Guaranty Trust	138.6
Manufacturers and Traders Trust	8.9
 <b><u>Pennsylvania</u></b>	
Dauphin Deposit	4.3
Fulton Bank	1.4
Integra Bank	7.7
Integra Bank - North	3.4
Integra Bank - South	2.4
Meridian Bank	12.3
 <b><u>Delaware</u></b>	
Wilmington Trust	4.5
 <b><u>Maryland</u></b>	
Citizens Bank	3.0
Mercantile Safe Deposit	2.2
Provident Bank	1.8

# CHOOSING A "HOME" STATE

(Laws that apply)



## BANK SERVICE CORPORATIONS

### FEDERAL

The Federal Bank Service Corporation Act provides a comprehensive structure regulating service corporation subsidiaries, including the amount of investment, activities which may be performed, customers for whom the services may be performed, locations where the services may be performed, and approval process.

### NEW JERSEY

The New Jersey provisions (N.J.S.A. 17:9A-24.1 to 24.6) also provide a comprehensive structure, but do not allow banks to invest in multiple bank service corporations or have out-of-state bank shareholders.

servcorp

## COMMUNITY REINVESTMENT ACT

### FEDERAL

The Federal Community Reinvestment Act of 1977 (12 U.S.C. §2901, et seq.) requires each appropriate federal financial supervisory agency use its authority that when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

### NEW JERSEY

The New Jersey Community Financial Services Act of 1991 (N.J.S.A. 17:16Q-1 et seq.), requires that each time a depository institution receives a CRA rating on and after July 1, 1990, from its appropriate federal financial supervisory agency, it shall send a copy of the public section of the written evaluation to the commissioner and the board within 45 calendar days of receipt. The commissioner shall make these reports available to the public for inspection and/or copying.

The Act also creates in the New Jersey Department of Banking a Community Financial Services Advisory Board. The Board shall consist of the Commissioner of Banking, the Commissioner of Community Affairs and eleven members to be appointed by the Governor with the advice and consent of the Senate. The Board shall review the CRA reports submitted to it pursuant to this Act and act as a resource by developing and recommending to the Commissioner ideas and programs to assist depository institutions in meeting community credit needs. In addition, the Board shall assist consumers in understanding and utilizing credit opportunities available through depository institutions in New Jersey. The Commissioner also has the authority to promulgate regulations pursuant to the Administrative Procedure Act to effectuate the provisions of this act.

## CONSUMER LEASING ACT

### FEDERAL

Federal Consumer Leasing Act of 1976, 15 U.S.C. §1667 et seq., defines "consumer lease" to mean a contract in the form of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g) of this title. It covers consumer lease disclosures, lessee's liability on expiration or termination of lease, consumer lease advertising and liability of advertisers, civil liability of lessors, and applicability of state law and exemptions by Board from leasing requirements.

### NEW JERSEY

New Jersey Truth in Motor Vehicles Leasing Act, N.J.S.A. 56:12-50 et seq., adopts an inconsistent regulatory scheme by requiring different disclosures in the lease agreement and requiring additional information be provided to the Lessor of the vehicle. The statute also requires the licensing of dealers and requires the Director of the Division of Consumer Affairs in the Department of Law and Public Safety to promulgate rules and regulations as may be needed to effectuate the purposes of the Act.

consleas.wp

## CREDIT BALANCES

### FEDERAL

The Federal Truth in Lending Act (12 U.S.C. 1666d) provides that whenever a credit balance in excess of \$1 is created in connection with a consumer credit transaction, the lender will refund it upon request of the consumer and make a good faith effort to refund to the consumer any amount remaining in the account for more than six months.

### NEW JERSEY

The New Jersey law (N.J.S.A. 56:11-to to 15) also requires that a "clear and conspicuous notice" of the right of the consumer to receive a refund, and that the creditor must refund the credit balance when six billing consecutive billing cycles of inactivity have occurred.

credbala

## DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

### FEDERAL

Depository Institution Management Interlocks Act, 12 U.S.C. § 3201 et seq., prohibits a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two corporations are not affiliated and are very large or are located in the same general vicinity.

### NEW JERSEY

New Jersey's Interlocking Relationships Act, N.J.S.A. 17:16E-1 et seq., parallels the federal act and purports to further fair competition among depository institutions and depository holding companies, which are defined in New Jersey's Act as "financial institution[s]," by prohibiting a management official of a financial institution from serving in a management position of another financial institution if the two organizations are in the same locale.

### DISTINCTIONS

The two acts differ in several ways. First, New Jersey's act provides that interlocking relationships existing prior to the effective date of the act, January 1, 1976, [were] to be terminated by no later than January 1, 1977. Whereas, the federal act provides a more detailed description of how interlocking relationships existing prior to its effective date are to be terminated. Second, the implementation of rules and regulations is more centralized in New Jersey; the federal act gives the powers to several entities. Third, New Jersey's act does not provide enumerated exceptions to the act's prohibitions, but the Federal act does. Lastly, unlike the Federal act, New Jersey's act does not make any reference to the size of the Corporations involved.

intrlock.wp

**DISQUALIFICATION FROM SERVING AS  
DIRECTOR, OFFICER OR EMPLOYEE OF A BANK**

**FEDERAL**

Section 1929 of the Federal Deposit Insurance Act prohibits any person from serving as a director, officer or employee of an insured depository institution who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has entered into a pretrial diversion program in connection with a prosecution for such offense, without the prior written consent of the FDIC.

**NEW JERSEY**

Article 5A of the New Jersey Banking Act, N.J.S.A. 17:9A-18.1 to 18.2, prohibits any person who has been convicted of any crime involving dishonesty or a breach of trust from serving as a director, officer or employee of a bank or savings bank without the written consent of the New Jersey Commissioner of Banking.

disqual

## HOME MORTGAGE APPLICATION AND CLOSING RULES

### FEDERAL

The federal law that addresses most application and closing processes is the Truth in Lending Act [U.S.C.A. 15 § 1601 et seq.]. The Equal Credit Opportunity Act [U.S.C.A. 15 § 1691] regulates the timing for notification of action taken on an application and regulates the content of adverse action notices. The Real Estate Settlement Procedures Act [U.S.C.A. 12 § 2603 et seq.] requires up-front disclosure of fees and a full accounting of all fees at time of closing.

### NEW JERSEY

#### NEW JERSEY HOME MORTGAGE APPLICATION AND COMMITMENT ACT [17:16F-12]

This law was enacted because the Legislature was concerned about the growing complexity to the mortgage loan application, commitment and closing process as well as the constant changes to interest rates. The Legislature delegated the authority to promulgate rules and regulations regarding these matters to the Commissioner of Banking.

The relevant New Jersey regulations are found at 3:1-16.1. These mortgage processing rules set limits on fees that can be charged, and regulate the application process, lock-in agreements, the commitment process, and set forth special requirements for mortgage brokers.

The state law differs from federal law in the following ways:

1. State law specifically defines and sets forth limits and disclosures for certain types of fees typically charged by lenders during the mortgage process. Federal law merely requires accurate disclosure of such fees in the "Fed box" as well as in a good faith estimate and HUD-1/HUD-1A settlement statement.
2. State law heavily regulates the charging of application fees and requires very specific disclosures. Federal law merely requires their accurate disclosure.
3. State law requires a specific disclosure regarding refundability for each fee the lender charges. Federal law does not require a specific disclosure of refundability but does require that such fees be refunded when a borrower properly exercises his/her right to rescind. State law requires refunding of all funds paid to lender if the borrower's application is denied or if the commitment is unacceptable.
4. State law heavily regulates lock-in agreements. Federal law does not address lock-in agreements but would merely require proper disclosure of a lock-in fee and its refund should the borrower rescind.

5. State law heavily regulates the commitment letter process and sets forth specific disclosures that must be made in commitment letters including APR and estimated payment schedule. Many of these disclosures are duplicative of disclosures required by federal law. However, federal law does not require that any particular disclosures be made in a commitment letter. The commitment process is not regulated by federal law.
6. State law promulgates very specific rules for activities of mortgage brokers. Federal law merely requires the accurate disclosure of mortgage broker fees and commissions.

home-mtg.wp

## HOME MORTGAGE DISCLOSURE ACT

### FEDERAL

The Federal Home Mortgage Disclosure Act (12 U.S.C. 2801-2810), which applies to federally insured financial institutions, provides for an extensive information-gathering and reporting system on all loans secured by residences, as well as unsecured home improvement loans, including information on race, sex, income level, and location of the property by census tract. The law also sets forth a comprehensive system for public availability of this information. The Federal Financial Institutions Examination Council compiles aggregate data from all reporting institutions for census tracts. The Equal Credit Opportunity Act (12 U.S.C. 1691) prohibits discrimination in credit on the basis of race, color, religion, national origin, sex, marital status or age.

### NEW JERSEY

The New Jersey law (N.J.S.A. 17:16F-1 to 11) prohibits discrimination on any basis prohibited by law or on the basis of location in a specific neighborhood or geographical area in mortgage lending and requires depository institutions to compile information similar to that required under the Federal law, with several additions, and make such information publicly available.

hmدا

## LIFELINE CHECKING ACCOUNTS

### FEDERAL

The Federal Deposit Insurance Act (12 U.S.C. 1834) provides for reduced FDIC insurance premiums on basic transaction accounts that qualify as lifeline accounts, with requirements on minimum balance, fees, etc. to be set by the federal regulators. This does not go into effect until funds are appropriated.

### NEW JERSEY

The New Jersey Consumer Checking Account Act (N.J.S.A. 17:16N-1 to 7) requires depository institutions in New Jersey to offer lifeline accounts meeting requirements set by the Commissioner of Banking. The requirements are to include the opening deposit amount, the minimum balance, number of free checks, permitted withdrawals, and monthly maintenance charge. This law has been preempted as to national banks, who do not have to comply.

lifeline

## LOANS TO EXECUTIVE OFFICERS AND DIRECTORS OF BANKS

### FEDERAL

Sections 22(g) and 22(h) of the Federal Reserve Act, 12 U.S.C. §§ 375a and 375b, govern the extension of credit by a bank to an executive officer, director or principal shareholder of the bank, its holding company or any other subsidiary of the holding company and their related interests. The Federal Reserve, through its Regulation O, 12 C.F.R. § 215.1 et seq., has adopted regulations which implement the statutory scheme. In general, the statutes prohibit preferential loan terms and require advance approval of loans by the board of directors. Overdrafts by executive officers and directors are prohibited. Extensions of credit to executive officers can be for any amount to finance the education of children or to finance a residence. All other extensions of credit cannot exceed \$100,000. Various reports and records are also required. This statutory scheme did not apply to most state-chartered banks until 1991, but it now applies to all New Jersey banks as a result of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

### NEW JERSEY

Article 15 of the New Jersey Banking Act of 1948 as amended, N.J.S.A. 17:9A-71 et seq., also establishes limitations on obligations of directors and officers of banks. These limitations are implemented through regulations issued by the Commissioner of Banking set forth in N.J.A.C. 3:6-3.1 et seq. The limitations in substance parallel the federal regulatory scheme, although there are variations in permitted amounts and definitions of related interests.

Reg-O.wp

## MORTGAGE ESCROW RULES

### FEDERAL

The federal law that addresses escrow accounts is the Real Estate Settlement Procedures Act (RESPA) [U.S.C.A. 12 § 2605 and § 2609].

### NEW JERSEY

#### NEW JERSEY MORTGAGE ESCROW ACT [17:16F-15 ET SEQ.]

This law sets limits on payments into mortgage escrow accounts and regulates the servicing of these accounts.

The state law differs from the federal law in the following ways:

1. State law requires notice to the borrower of any transfer in servicing not more than 45 days after date of transfer. Federal law requires 30 days notice to borrower.
2. State law heavily regulates notification to tax collectors and the manner in which tax payments are disbursed. Federal law does not specifically regulate disbursements of tax payments.
3. State law requires at least an annual periodic analysis of escrow accounts whereby the borrower is notified of any surplus or shortages. Federal law requires annual notification of only shortages.
4. Federal law requires an escrow account statement be given at the time of closing (or 45 days after establishment of the account) and also requires an annual statement. State law only requires an annual statement.

**NOTE:** The Department of Housing and Urban Development will be issuing final amendments to the escrow section of RESPA any day now. These amendments impose stricter requirements on servicers regarding accounting methods, overages and notice to mortgagors.

escrow.wp

## NOTICE OF FUNDS AVAILABILITY

### FEDERAL

The Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., is a federal law which contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal within set time periods. Subpart B of the Act includes temporary and permanent funds availability schedules for banks to follow; rules regarding exceptions to the availability schedules; rules regarding disclosure of funds availability policies to customers; and the liabilities of banks for failure to comply with the Act. Subpart C of the Act also contains rules to expedite the collection and return of checks by banks. The Act provides that any bank that fails to comply with any requirement imposed under subpart B will be liable for an individual customer's actual damages plus additional amounts of not less than \$100 up to \$1,000; and in the case of a class action, no more than the lesser of \$500,000 or 1% of the net worth of the bank involved.

### NEW JERSEY

The New Jersey Draw Against Deposits Disclosure Act, N.J.S.A. 17:16L-1 et seq., is a state law which requires every banking institution to provide a written disclosure to every deposit account holder and to every applicant for a deposit account, describing the institution's funds availability policy. Institutions must also disclose to their account holders any significant changes to their funds availability policy. The Act also provides that any banking institution which willfully violates any provision of the Act shall be subject to a fine of not more than \$1,000 for each violation, up to a maximum of \$5,000 in any one year.

### DISTINCTIONS

- (1) The New Jersey Act does not include any temporary or permanent funds availability schedules that banks must follow.
- (2) The New Jersey Act does not contain time periods for mailing disclosure notices.
- (3) The New Jersey Act's civil liability section for noncompliance imposes higher fines on banks.
- (4) The New Jersey Act does not cover the collection and return of checks by banks.
- (5) The Federal Act preempts State law disclosure requirements concerning funds availability "that are inconsistent with the Federal requirements"; thus, the New Jersey Act is preempted by the Federal Act to the extent that the Federal Act applies to demand deposit accounts (checking accounts). The New Jersey Act, however, continues to apply to other types of deposit accounts, including money market accounts and savings accounts.

## NOTICE OF MATURITY OF CERTIFICATES OF DEPOSIT

### FEDERAL

The Federal Truth in Savings Act, 12 U.S.C. § 4301 et seq., requires that a bank give a written notice of maturity of certificates to depositors within a specific time period.

### NEW JERSEY

New Jersey has a Department of Banking regulation, N.J.A.C. 3:7-4.1, entitled "The State Notice of Maturity on Long-Term Time Deposits" which requires that a bank give a written maturity notice to depositors within a specific time period.

The differences are:

New Jersey: (1) written notice must be provided not less than 15 days or more than 45 days prior to maturity date; (2) the notice must include the options available at maturity and the depositor must be advised to call bank for new interest rates prior to maturity; (3) the regulation covers variable maturity accounts and (4) there is no mention of plain language.

### Federal

1. written notice at least 30 days prior to maturity.
2. notice must include:
  - APY
  - Period APY is in effect
  - Annual rate of simple interest
  - Frequency of interest compounding & crediting
  - Description of method used to determine balance on which interest is paid
  - Minimum balance required & how it is calculated
  - Any time requirements which must be met
  - Description of what will apply if requirements are not met
  - Statement that any interest accrued but not credited at time of withdrawal will not be paid
  - Any provision or requirement relating to nonpayment of interest
  - APY is based on an annual rate guaranteed for a stated term
3. does not mention variable maturity accounts.
4. requires clear and concise language and formatted so depositors can readily understand terms.

maturity.wp

The State Notice of Maturity on Long-Term Time Deposits (NJAC 3:7-4.1) requires that the bank give a written maturity notice to depositors within a specific time period.

The Federal Truth in Savings Act (12USC 4301) requires that the bank give a written notice of maturity to depositors within a specific time period.

The differences are:

#### **State**

1. written notice must be provided not less than 15 days or more than 45 days prior to maturity date.
2. notice must include:
  - Options available at maturity
  - Depositor must be advised to call bank for new rates prior to maturity.
3. covers variable maturity accounts.
4. no mention of plain language.

#### **Federal**

1. written notice at least 30 days prior to maturity.
2. notice must include:
  - APY
  - Period APY is in effect
  - Annual rate of simple interest
  - Frequency of interest compounding & crediting
  - Description of method used to determine balance on which interest is paid
  - Minimum balance required & how it is calculated
  - Any time requirements which must be met
  - Description of what will apply if requirements are not met
  - Statement that any interest accrued but not credited at time of withdrawal will not be paid
  - Any provision or requirement relating to nonpayment of interest
  - APY is based on an annual rate guaranteed for a stated term
3. does not mention variable maturity accounts.
4. requires clear and concise language and formatted so depositors can readily understand terms.

NEW JERSEY

# CITIZEN ACTION

Phyllis Salowe-Kaye/Executive Director

October 24, 1994

## TESTIMONY OF PHYLLIS SALOWE-KAYE EXECUTIVE DIRECTOR, NEW JERSEY CITIZEN ACTION

**Before a Joint Hearing - Senate State Management, Investments and Financial Institutions Committee and the Assembly Financial Institutions Committee on the impact of the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994"**

My name is Phyllis Salowe-Kaye and I am the Executive Director of New Jersey Citizen Action, the state's largest consumer coalition.

Citizen Action is extremely concerned about the effect the "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994" will have on the citizens of New Jersey.

As interstate mergers and acquisitions of a bank or branch take place, as out-of-state banks move into New Jersey and, as foreign banks cross the ocean and settle into our state, there is absolutely no guarantee that service to New Jersey's residents, particularly in low and moderate minority communities, will improve. There is absolutely no guarantee that lending discrimination will decrease. There is absolutely no guarantee that as these banks get bigger, they will get better.

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Main Office  
400 Main Street  
Hackensack, New Jersey 07601  
(201) 488-2804

Central Jersey  
46 Paterson Street  
New Brunswick, New Jersey 08901  
(908) 246-4772

South Jersey  
556 Haddon Ave.  
Collingswood, New Jersey 08108  
(609) 869-0007

Phone Project  
94 Church Street  
New Brunswick, New Jersey 08901  
(908) 246-4075

NJCA is an affiliate of Citizen Action, a national progressive coalition



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There will be an acceleration of the already rapid pace of consolidation in banking. Eventually, it will mean fewer and bigger banks, layoffs among bank employees and probably less control of lending by local bankers.

New Jersey Citizen Action is concerned that there will be an increased concentration of money and power in fewer and fewer banks. This is something that we worry about. Right now several New Jersey banks are leading the way in improving banking services to the cities and have leadership within their own organizations who are really dedicated to improving lending patterns in our urban communities. There is no guarantee that these people will have power and control decision-making, as banks grow into mega giant corporations.

Large coast-to-coast banking giants will be able to consolidate their operations into a single institution, decision-making is likely to become more centralized, and therefore more removed from our communities. This will make it harder for local groups to get nationwide institutions to respond to their particular needs and local conditions. Reclaiming our distressed communities requires meaningful involvement of banks, not bank managers living hundreds of miles away.

Interstate branching is pure and simply a gift for the LARGE banks; in fact, most community banks oppose interstate

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branching. In addition, 1992 and 1993 were the most profitable years ever in the history of American banking. Why, after a \$300 billion bailout and record profits are we giving them a gift which works against consumer and community interests?

Interstate branching makes it much easier for expanding banks to enter new markets on a selective basis by "cherry picking" the branches they buy from other financial institutions.

Interstate branching can lead to the loss of valuable information currently reported on the Statement of Condition Reports to the regulators on the lending activities of banks on a state-by-state basis.

Interstate branching may result in the siphoning of deposits from our communities, more branch closings, and the loss of credit and deposit services as banks pick and choose where they want to do their business.

We can expect to see big banks from outside this region buy bigger banks in our state. Regional banks will become nationwide banks. There might be a scaling back or phasing out of the regional headquarters that some banks maintain in New Jersey. Jobs will be lost. There is absolutely no guarantee that the savings that the banks realize through internal consolidations will be passed on to consumers.

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According to Paul Nadler, a Professor of Finance and Economics at Rutgers Graduate School of Management, "Big banks snatch defeat from the jaws of victory. They have a way of turning customers off." You must make a commitment that this doesn't happen.

If New Jersey is to opt in to the provisions of this law then the New Jersey Department of Banking must become a vigilant advocate of the consumer, particularly low and moderate, and minority borrowers. The department must be adequately funded and staffed with people who are experienced and are sensitive to the needs of the community. Eliminating lending discrimination must become a priority and strong regulations must be passed to guarantee that as banks get bigger they do get better.

Thank you.

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JOINT HEARING OF THE NEW JERSEY ASSEMBLY FINANCIAL  
INSTITUTIONS COMMITTEE  
AND  
THE NEW JERSEY SENATE STATE MANAGEMENT, INVESTMENTS  
AND FINANCIAL INSTITUTIONS COMMITTEE  
October 24, 1994

Testimony of Geoffrey M. Connor (Former New Jersey Commissioner of Banking) on behalf of the Banking Law Section of the New Jersey State Bar Association.

INTRODUCTION

Good morning. I am Geoffrey M. Connor, former New Jersey Commissioner of Banking. I am a partner in the Princeton Law Firm of Reed Smith Shaw & McClay and I'm also a member of the Executive Committee with the Banking Law Section of the New Jersey State Bar Association, which has asked me to appear today to present technical observations on the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Interstate Branching Act") signed by President Clinton on September 29, 1994, and New Jersey's reaction to this Act.

INTERSTATE BANKING

The Interstate Branching Act contains several important provisions and triggers. One year after enactment, bank holding companies may acquire subsidiary banks within any state in the union. This provision has no practical effect on New Jersey, as New Jersey already permits interstate bank acquisitions on a reciprocal basis. Unlike other provisions in this Act, the states may not opt out of this interstate banking provision, so on September 29, 1995 all states will in effect be reciprocal states. State may protect new charters from acquisition by prohibiting the acquisition of banks which are less than 5 years old. As I read the law, this protection must come from statute, not, as is presently the case in New Jersey, from regulation.

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## INTERSTATE BRANCHING

After June 1, 1997, bank holding companies with subsidiaries in different states may merge their subsidiaries to form interstate branching networks. Some bank holding companies have already formed interstate branching networks by taking advantage of the provision in the National Bank Act which permits them to move their headquarters 30 miles even if this means across state borders. Federally chartered savings & loan associations may also currently branch interstate. After June 1, 1997, all banks may do so unless particular states "opt out" of this provision, which they have the right to do. States also have the right to set an earlier trigger and prohibit "de novo" branching, i.e., to prohibit an out of state bank from initially entering the state by establishing a branch or by buying existing branches without first acquiring an existing institution. Enabling legislation on the state level will be necessary to permit state-chartered institutions, including out-of-state state-chartered institutions wishing to come into New Jersey, full utilization of this interstate branching authority. States will also have to decide how they are going to tax interstate branches.

## TECHNICAL MATTERS FOR NEW JERSEY TO CONSIDER

The Banking Law Section of the New Jersey State Bar Association does not take a position as to whether or not New Jersey should opt in or opt out of interstate branching, how it should tax branches, whether it should prohibit de novo branching, or how it should select the other options available under the Act. What they have asked me to do today is to make technical observations as to matters in existing law which will have to be looked into and to present some of the alternatives available. I have identified 10 substantive areas which the Legislature should consider and will briefly outline these to you. They are as follows:

### 1. Opt in or opt out

States may opt in or out of interstate branching prior to June 1, 1997. Sec. 102(a) of Act.

### 2. Trigger prior to June 1, 1997

States may move the trigger date up to a date earlier than June 1, 1997 and may condition it on a nationwide reciprocal treatment requirement until May 31, 1997. Sec. 102(a) of Act.

### 3. Taxation of branches

States must decide how to tax branches of out-of-state banks. The Department of the Treasury should already have a policy on this question of taxation as there are currently in New

Jersey branches of out-of-state thrifts such as Sovereign Bank, FSB of Pennsylvania. How are they being taxed?

4. Protection of new charters

States may protect new charters less than five years old from acquisition. States may not protect new charters more than 5 years old. Sec. 102(a) of Act. Current Department of Banking regulations state that the Commissioner shall condition a charter approval on a depository not merging, consolidating or selling for five years. N.J.A.C. 3:1-2.20(a)2. However, the statutes authorizing mergers do not contain a five year limitation. N.J.S.A. 17:9A-133 et seq. (banks), 17:9A-199 et seq. (savings banks) and 17:12B-198 et seq. (savings and loan associations). Supervisory mergers of troubled institutions, including across industry lines, may be ordered even when such an institution is less than five years old. N.J.S.A. 17:16J-1 et seq. As the reference in the Act is to statutory law, thought might be given to codifying the five year protection contained in regulations, perhaps granting the Commissioner flexibility to make exceptions in appropriate cases.

5. Permission for de novo branching

States may permit or prohibit de novo branching into their state and may permit or prohibit the acquisition of an existing branch or branches, insisting instead that initial entry be by acquisition of a charter, which will then be merged into the parent. 102(a). The Act states that an "interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank." Sec. 102(a). So specific authorization would be required for such a transaction to occur. Sec. 103 of the Act grants the state specific authority to "opt in" to an election to permit interstate branching through de novo branches.

6. State chartered institutions; powers

States must examine the situation of state chartered institutions. To protect the dual banking system, these institutions should have the same powers as national banks and federally chartered savings and loans. That means the power to branch interstate, including authorization for out-of-state state chartered institutions to branch into New Jersey. It also means cooperative agreements as authorized by Sec. 106 of the Act, with State Banking Departments in other states, particularly Pennsylvania and New York, but perhaps also Maryland and Delaware, to jointly examine state chartered institutions in both states without unnecessary duplication. A state assessment formula will have to be devised.

Also, the powers and the parity quagmire should be clarified. There is general agreement that current parity provisions in New Jersey state law have the effect of granting federal powers to state institutions, but that is not exactly what the law provides.

N.J.S.A. 17:9A-24a provides that the "Commissioner shall have the power to make, amend and repeal regulations permitting banks to exercise any power, right, benefit or privilege permitted to national banks, provided such power, right, benefit or privilege is not contrary to law." N.J.S.A. 17:9A-246 contains a similar provision with respect to savings banks, again using the phrase "not contrary to law". The statute presents two problems. The first is that an affirmative act of the Commissioner is required if there is to be parity. The second is the meaning of the phrase "not contrary to law".

The first problem is address in N.J.A.C. 3:6-12.1 with respect to banks and N.J.A.C. 3:6-1.1 with respect to savings banks. These regulations automatically grant parity with respect to any federal "power, right, benefit or privilege" unless the Commissioner states otherwise within 30 days of adoption of a federal regulation granting such power or, with respect to banks, "unless contrary to State law."

Savings and loan associations have parity with federal associations by virtue of N.J.S.A 17:12 B-48(21), if authorized by the Commissioner and provided that such power "is not specifically prohibited by law." The enabling regulation automatically grants parity with federal powers within 30 days of adoption "unless contrary to state law." N.J.A.C. 3:26-4.1.

But what does "not contrary to law" mean? If state law grants a power but sets rules and federal law does not set the same rules, can federal law be looked to for authority and the state rules ignored? Some feel they can be, with respect to powers only, so long as a specific state prohibition is not involved. This is the clear meaning of the prohibition language contained in the Savings and Loan Act, but this conclusion is less clear under the Banking Act language governing banks and savings banks.

#### 7. Foreign Banking Act

New Jersey's Foreign Banking Act, which prohibits out-of-state and truly foreign banks from doing business here will have to be virtually repealed. This law is contained at N.J.S.A. 17:9A-316 et seq. First, this law contains a flat out prohibition against foreign banks "organized under the laws of a foreign government" from transacting any business in the state. N.J.S.A. 17:9A-316.A. This prohibition is contrary to Sec. 104 of the Interstate Branching Act, which permits foreign banks to operate

in the United States and branch here as long as they establish a U.S. subsidiary to do so.

Second, New Jersey's Foreign Banking Act permits other "foreign banks", i.e. banks from other states, not foreign countries, authority only to transact business in this state as executor or testamentary trustee or guardian, after obtaining a certificate of authority from the Commissioner. N.J.S.A. 17:9A-316B. This prohibition is also inconsistent with the Interstate Branching Act.

The Foreign Banking Act does grant foreign banks the right to operate back-office service facilities in this state. N.J.S.A. 17:9A-316C. This section, which was enacted when I was Banking Commissioner, has created over 2,500 jobs in Jersey City. It should be retained to accommodate those foreign banks operating in New York through branches which do not choose to establish separate U.S. subsidiaries.

The back-office exception has one ambiguity which might be clarified. It brings within its purview entities "affiliated" with foreign banks. N.J.S.A. 17:9A-316C. Some foreign banks incorporate subsidiaries as loan production offices. I do not think it was the intention of the Legislature to outlaw separately incorporated loan production offices. Indeed, you may wish to specifically authorize loan production offices of out-of-state and foreign banks, whether or not separately incorporated.

#### 8. Anti-trust considerations

The federal law sets anti-trust limits of 10% nationwide and 30% in any one state. Sec. 101. The states may impose other limits. Sec. 101. NJ once had a law that no bank could have more than 20% of deposits statewide but this law was repealed when First Fidelity hit 17%. I doubt it could be reinstated, but the legislature should at least know that this is a topic to be examined.

#### 9. Intra-state branching

States may preserve their own intra-state branching requirements. This is not particularly relevant to us, as New Jersey allows state-wide intrastate branching.

#### 10. Consumer protection

State consumer protection and fair lending laws remain in effect and applicable to national banks if applied on a nondiscriminatory basis, unless specifically preempted by federal law or regulation or ruling. Federal banking agencies must first publish a notice of intent and accept comment before preempting state law. Sec. 114. State legislatures should keep track of state law so preempted and they may wish to repeal those that only

apply to state-chartered institutions so as not to put them at a disadvantage.

It is my hope and the hope of the Banking Law Section of the New Jersey State Bar Association that these technical observations will be of assistance to the Legislature as you consider what New Jersey's response to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 should be.

Thank you.

/kls

LAW OFFICES  
**FISCHER & BATOR**  
225 MILLBURN AVENUE  
SUITE 209  
MILLBURN, NEW JERSEY 07041-1712

(201) 376-0111  
Fax (201) 467-0779

Suite 221  
64 Princeton-Hightstown Road  
Princeton Junction, NJ 08550  
(609) 799-5147  
Fax (609) 799-0806

JOINT HEARING OF THE NEW JERSEY ASSEMBLY FINANCIAL  
INSTITUTIONS COMMITTEE  
AND  
THE NEW JERSEY SENATE STATE MANAGEMENT, INVESTMENTS AND  
FINANCIAL INSTITUTIONS COMMITTEE  
October 24, 1994

Testimony of Christine V. Bator, Esq. Chairperson of the New Jersey Bar Association  
Banking Law Section.

I am Christine V. Bator, Esq. the Chairperson of the New Jersey Bar Association Banking  
Law Section and a partner in the law firm of Fischer and Bator. I served on Governor  
Whitman's Transition Team for the Department of Banking.

The Board of Director's of the Banking Law Section is fortunate to have Geoffrey M.  
Connor, our former Commissioner of Banking as a member. I have asked Jeff to present  
testimony on behalf of the section regarding the Riegle-Neal Interstate Banking And  
Branching Efficiency Act of 1994 and its implications for New Jersey.

As chair of the Section I would like to offer my support and the resources of the Section to  
address an overall reform of New Jersey's Banking Laws. Toward this end I am in the  
process of forming a committee of the Section to address this task. I look forward to  
working with all of you in the coming months

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# **NEW JERSEY COUNCIL OF SAVINGS INSTITUTIONS**

10 ROONEY CIRCLE, SUITE 170, WEST ORANGE, NEW JERSEY 07052-3356 • (201) 325-3600 • TELECOPIER (201) 325-1682

Our association, on behalf of the state chartered savings banks, first went on record in support of interstate branching in 1993. At that time we indicated support for immediate introduction of state legislation allowing state chartered institutions parity with their federal counterparts on a state by state reciprocal basis. Federal thrifts can branch in any state, and have the ability to establish de novo branches. Our interests were essentially to achieve parity with our federal counterparts and to do so as quickly as is possible.

Having said that, our organization has reaffirmed its support for immediate introduction of state legislation that will provide, on a reciprocal basis, the ability for state savings banks to branch in other states. We fully expect that any office located outside New Jersey will be subject to the provisions of that state and New Jersey would accordingly require the same of an out-of-state institution locating here. This would be applicable to all aspects of banking including taxation and applicable to foreign banks as well.

As to the question of de novo branching, our federal counterparts have no requirement to establish a presence (for example by acquisition of an existing institution) prior to such action. We recognize however, that such a step under state law may face strong objection and could possibly be difficult to establish reciprocally.

In view of our desire to move forward quickly we will hold our position on that aspect in abeyance, pending the outcome of this hearing and introduction of specific language.

10/24/94

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