

Banking by John Hoefle

Bush thrift bill reeks of fascism

The enforcement section of this bill would make even the Soviet KGB turn green with envy.

The new savings and loan "bailout" bill which passed the House and Senate on Aug. 4 takes the nation a step closer toward a police state, under the guise of "fighting fraud." The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 provides \$225 million over the next three years to fund Department of Justice operations against the S&Ls, plus an additional \$30 million for the federal courts. It mandates that the DoJ set up a regional fraud office in the Northern District of Texas, and compels the Comptroller General to study whether fraud offices need to be established in other parts of the country.

The fact that the bill is in reality an instrument for political targeting, is apparent by the vagueness with which it defines the "crimes" it establishes. To be guilty, one need merely be an "institution-affiliated party" who "causes or is likely to cause [!] more than a minimal loss" to said institution. Federal regulators also have the power to bar an individual from banking for life.

The regulators now have the power to decide who can be appointed directors or senior executives at any bank which 1) has been chartered less than two years; 2) has undergone a change of control within two years; or 3) is not in compliance with the minimum capital requirements, or is otherwise troubled.

The maximum civil fine that may be assessed by federal regulators has been raised to \$1 million per day per violation for an individual, or the lesser of \$1 million or 1% of total assets

per day for a bank, thrift, or credit union. Generally, the maximum amount of the civil penalty shall not exceed \$1 million, but in the case of continuing violations, the amount may not exceed the lesser of \$1 million per day or \$5 million. In the case where a "person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described . . . but may not exceed the amount of such gain or loss."

The maximum criminal penalty has been raised to a \$1 million fine and 20 years in prison, per violation.

The bill substantially exempts the Federal Reserve, the Resolution Trust Corp., the Federal Housing Finance Board, and the regional Federal Home Loan Banks, from the Privacy Act of 1978, giving them more power to poke around in the financial affairs of bank customers, while providing stiff penalties for any "institution-affiliated party" who informs the customer that his records are being probed.

The bill is effective immediately upon signing, but some of the civil fines may apply to previous conduct, if the one being penalized has not yet been officially notified, or if the act occurred after the last federal examination of the institution.

The bill includes protection for whistle-blowers who report alleged misdeeds by depository institutions or institution-affiliated parties, and sets up a reward for cases where the amount involved exceeds \$50,000. The reward is 25% of the amount of the fine,

penalty, restitution, or forfeiture involved, up to \$100,000.

The bill requires public disclosure of enforcement actions, except where the regulatory agency decides such disclosure "would seriously threaten the safety or soundness of an insured depository institution, such agency may delay the publication of such order for a reasonable time."

A procedure is established in which the deposit insurance at a particular institution can be terminated on the grounds of "unsafe or unsound" practices or conditions, or if the institution has violated any law, regulation, order, written condition, or written agreement with the regulators. The offending institution will be given a minimum of 30 days notice of a termination hearing; if terminated, the institution will be given from six months to two years, before the insurance is actually stopped. There is also a provision for temporary suspension of insurance. Temporary suspension of insurance can occur after the notice of intent to terminate insurance has been given, if the bank has no tangible capital under the regulatory guidelines. In such case, the FDIC "may issue a temporary order suspending deposit insurance on all deposits received by the institution."

The statute of limitations on financial institution offenses is set at 10 years. The new law will apply to offenses committed before the effective date of the law, if the statute of limitations previously applicable had not run out.

Finally, the bill makes "financial institution fraud" a violation of the notorious RICO Act, meaning that virtually anyone indicted under this outrageous law is subject to immediate seizure of personal assets, and everything else in RICO's police-state bag of tricks.