

# CRS Report for Congress

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## **Banking and Finance: Legislative Initiatives in the 105th Congress, Second Session**

Gary Shorter  
Specialist in Business and Government Relations  
Economics Division

F. Jean Wells  
Specialist in Economic Policy  
Economics Division

### **Summary**

This report reviews major banking and finance issues that are receiving congressional attention in the 2nd session of the 105th Congress. It will be updated periodically to reflect legislative developments. Relevant CRS products are referenced; congressional offices may order these by calling (202) 707-1732. The contents of specific bills, legislative histories and current status are available on the Legislative Information System (LIS) at [<http://www.congress.gov>].

### **Overview**

Financial services available to the public are changing significantly as are the institutions providing such services. Changes reflect marketplace adaptation to technological advances and rising global markets. Court and regulatory decisions are also affecting competing components of the financial services industry. These developments challenge existing laws defining institutional distinctions and regulatory structures. Congress has the unique vantage point of considering the whole as well as the parts. Pending legislation ranges from comprehensive financial modernization legislation to legislation that affects specific industries and financial practices.

### **Financial Modernization**

Legislation to commingle banking services with other forms of financial and commercial enterprises includes H.R. 10 (Leach), H.R. 268 (Roukema), S. 298/H.R. 669 (D'Amato and Baker), and H.R. 2940 (Dreier). The Secretary of the Treasury outlined the Administration's plan for financial modernization in testimony before the House Banking Committee in June 1997. Financial modernization proposals would amend the

Glass-Steagall Act, which separates banking and the securities business, and the Bank Holding Company Act, which regulates companies controlling banks. They take different approaches about how changes should occur. H.R. 10 (amended) passed the House by one vote, May 13, 1998. It would allow banking, insurance, and securities affiliations in a financial holding company (FHC), but limit banking and commerce. FHCs would be regulated by the Federal Reserve. The bill provides for functional regulation and includes a number of consumer protection provisions.

### **Selected CRS Products**

CRS Issue Brief 97034. *Financial Services Modernization: Legislation and Oversight in the 105th Congress*, by F. Jean Wells. (This issue brief lists other CRS products related to financial modernization.)

CRS Report 98-550. *Financial Modernization/Glass Steagall Act Issues and the Financial Services Act of 1998, H.R. 10 as Passed in the House*, by William Jackson.

CRS Report 98-399. *Banking Acquisition and Merger Procedures*, by Maureen Murphy.

### **Merging the Thrift and Bank Charters**

P.L. 104-208 anticipates the merger of the federal bank and thrift deposit insurance funds by the end of the 105th Congress only if provisions have been made to merge the thrift and bank charters. The lines of business in which banks and thrifts and their holding companies can engage, as well as branching authorities, differ. To arrive at a common charter, decisions would have to be made about how to handle such distinctions. Determinations could have restrictive or expansive implications for financial modernization more generally. Thus, some financial modernization proposals (see above), incorporate provisions for thrift charter conversion.

### **Selected CRS Products**

CRS Report 96-905. *Banking Provisions in P.L. 104-208: Relevance for the 105th Congress*, by F. Jean Wells.

### **Redefining the Role of the Federal Home Loan Banks**

The movement toward merging bank and thrift charters and regulation has highlighted efforts to alter the role of the Federal Home Loan Bank System (FHLBS). The Federal Home Loan Banks (FHLBs) were once part of the system that chartered and regulated savings and loan associations. They now exist primarily to provide liquidity to depository institutions to the extent that such institutions lend for residential finance. The FHLBs also continue to generate funds to help pay for part of the savings and loan cleanup. In the 104th Congress, the House Banking Committee considered H.R. 3167, which addressed structure, mission, regulatory, and membership issues, in addition to payment requirements for the savings and loan cleanup. The basic thrust of that legislation was to broaden the role of the FHLBs. Reorganization of the Federal Home

Loan Bank System is included in H.R. 10 amended, passed by the House, May 13, 1998. S. 1423 is pending in the Senate.

### **Selected CRS Products**

CRS Report 97-993. *The Federal Home Loan Bank System in H.R. 10*, by Barbara Miles.

CRS Report 97-358. *The Federal Home Loan Banks: Functions and Future*, by Barbara Miles.

### **ATM Fees**

In April 1996, Visa U.S.A. and MasterCard International began to permit ATM owners or operators to charge a fee to ATM users accessing accounts in other banking institutions. While account-holding institutions have always been able to charge their customers for using the institutions' own ATMs (and to charge their customer for using another institution's or a nonbank's ATM to access their accounts), this new surcharge fee was in addition to fees charged by the account-holding institution. The Federal Reserve's Regulation E spells out disclosure of fees for electronic banking services. Some sentiment exists that these disclosure requirements must be expanded in light of the new ATM surcharges or, alternatively, that the federal government should go beyond disclosure to banning such fees. H.R. 264, H.R. 795, and S. 885 have been introduced in the 105th Congress. The Senate Banking Committee voted not to include ATM provisions in the regulatory relief bill it marked up July 30, 1998.

### **Selected CRS Products**

CRS Report 97-157. *Automated Teller Machine (ATM) Fees: An Update*, by Pauline Smale.

### **Credit Union Membership**

President Clinton signed into law P.L. 105-219 (H.R. 1151), the Credit Union Membership Access Act, on August 7, 1998. It sets membership standards for future multi-group credit unions and grandfathers existing credit unions. The issue arose out of a Supreme Court ruling February 25, 1998, that federal credit unions could not consist of more than one occupational group having a common bond ("common bonds" may be by occupation, association, or community). In 1982, the National Credit Union Administration had begun approving credit union fields of membership that included more than one distinct group. Banks challenged this expansion of membership. They saw it as an encroachment by an industry they regard as tax-advantaged. Without legislation, a district court order limiting credit union expansion was anticipated to implement the Supreme Court ruling. The law also provides for stricter supervisory and commercial lending requirements. Community Reinvestment Act-like requirements in the House version of the bill were deleted in the Senate.

## **Selected CRS Products**

CRS Report 98-162. *NCUA v. First National Bank & Trust Co., \_\_ U.S. \_\_ (No. 96-843): Credit Union Common Bond Ruling*, by M. Maureen Murphy.

CRS Report 97-548. *Should Credit Unions be Taxed?*, by James Bickley.

CRS Report 97-267. *Multiple-Group Federal Credit Unions*, by Pauline Smale.

## **Depository Institution Regulatory Relief**

Banks and thrifts are subject to numerous safety-and-soundness and consumer protection laws. The depository institutions have sought regulatory relief from the compliance costs that are not imposed on other financial institutions. Congress most recently addressed regulatory relief in P.L. 104-208 (Title II). S. 1405, marked up by the Senate Banking Committee, July 30, 1998, combines regulatory relief for banks with provisions to permit the Federal Reserve to pay interest on reserve balances depository institutions maintain with it and to allow banks to pay interest on business checking accounts. The House Banking Committee's Subcommittee on Financial Institutions marked up its version of regulatory relief legislation, H.R. 4364, August 4. A controversial amendment would exempt banks and thrifts with under \$250 million in assets from the Community Reinvestment Act. Interest on reserves was included in the House Banking Committee version of credit union legislation (see above), but was not in the version of H.R. 1151 voted by the House.

## **Selected CRS Products**

CRS Report 98-474. *Payment of Interest on Demand Deposits: An Economic Analysis*, by G. Thomas Woodward.

CRS Report 98-416. *Payment of Interest by the Federal Reserve to Depository Institutions: An Analysis*, by G. Thomas Woodward.

## **Bankruptcy Reform**

In 1996, and again in 1997, the number of personal bankruptcy petitions filed exceeded one million, despite low unemployment, stable interest rates, and healthy economic growth. The causes of the soaring bankruptcy rate are the subject of controversy. Two bills before the 105th Congress — H.R. 3150 (passed by the House on June 10, 1998) and S. 1301 (approved by the Judiciary Committee on June 4, 1998) — seek to eliminate the abuse of the bankruptcy system by those who could afford to pay at least part of their debts. Under these “needs-based” bankruptcy proposals, individuals whose income exceeded certain thresholds could be required to file Chapter 13 bankruptcies (where debt is repaid over time out of future income) instead of Chapter 7 (where unsecured debt is immediately discharged, or wiped out, leaving future income unencumbered).

## **Selected CRS Products**

CRS Report 98-577. *A The Consumer Bankruptcy Reform Act of 1998: S. 1301, 105th Congress, 2nd session (1998)*, by Robin Jeweler.

CRS Report 98-517. *Consumer Proposals in the Bankruptcy Reform Act of 1998: H.R. 3150, 105th Congress, 2nd session (1998)*, by Robin Jeweler.

CRS Report 97-637. *One Million Personal Bankruptcies a Year: Economic Implications and Policy Options*, by Mark Jickling.

## **Regulation of Futures and Derivatives Markets**

Current interest focuses on the existence of two competing markets: the exchange-traded futures and options market, regulated by the Commodity Futures Trading Commission (CFTC), and the over-the-counter (OTC) derivatives, or swaps market, which is largely unregulated. The most popular contracts in both markets are financial instruments that gain and lose value as interest rates change. Two paths are being considered: to deregulate the exchange market, or to increase regulation of the OTC market. H.R. 467 and S. 257 would permit the exchanges to create unregulated “professional” markets, to allow them to compete with swaps on a level playing field. In May 1998, the CFTC published a “concept release” exploring the possibility of bringing the swaps market under its regulation. This initiative drew protests from other regulators: H.R. 4062 directs the CFTC not to pursue its unilateral investigation of the market but to cooperate with other regulators to study the adequacy of current supervision of the swaps market.

## **Selected CRS Products**

CRS Issue Brief 97040. *Futures and Derivatives: Commodity Exchange Act Amendments*, by Mark Jickling.

CRS Report 98-52. *Derivatives: A New Federal Accounting Standard*, by Mark Jickling.

## **Securities Litigation Reform**

Several bills were introduced in the 1st session of the 105th Congress that address issues relating to private securities litigation reform. In December 1995, Congress enacted H.R. 1058, the Private Securities Litigation Reform Act of 1995, as P.L. 104-67. The law attempts to make it harder for unwarranted class-action securities suits to be filed in federal courts. However, after the law’s enactment, concerns arose that state courts were increasingly being used to circumvent P.L. 104-67. H.R. 1653 and H.R. 1689/S. 1260 address this perceived problem by essentially extending P.L. 104-67’s reach to state courts. Among other things, the bill’s opponents are concerned that extending P.L. 104-67 to the states may abridge the opportunities that plaintiffs with meritorious cases have for legal redress. This was a concern that was initially held by the Securities and Exchange Commission. However, in late March, the agency voted to give its (conditional) support to S. 1260, providing a boost to the bipartisan legislation, which passed the Senate, May 13, 1998. On June 24, 1998, the House Commerce Committee

passed H.R. 1689. And on July 22, H.R. 1689 was passed by the House. Differences between S. 1260 and H.R. 1689 will attempt to be worked out in conference.

### **Selected CRS Products**

CRS Report 98-350. *Securities Litigation Reform: Unfinished Business?* by Gary Shorter.

CRS Report 98-164. *Uniform Standards in Private Litigation: Limitations on Shareholder Lawsuit*, by Michael V. Seitzinger.

### **Other Issues**

Many other issues affecting financial institutions and the delivery of financial services undoubtedly are receiving attention in the 105th Congress, 2nd session. Among them are electronic issues and issues related to monetary policy and to financial problems in Asia. P.L. 105-67 addresses year 2000 computer problems with regard to financial institutions. Pending financial markets' bills include S. 1518 and S. 2000. Besides broad-reaching encryption legislation, legislation addressing "digital signatures" that would apply specifically to financial institutions has been introduced (H.R. 2937, H.R. 3472, and S. 1594).

The House and Senate Banking Committees have ongoing responsibility for monetary policy oversight. By statutory mandate, the Federal Reserve Board reports to the House and the Senate on the state of monetary policy twice a year, by February 20 and July 20. The Congress is considering financial problems in Asia legislatively in the context of funding for the International Monetary Fund; related questions include possible effects on the United States economy and financial institutions that have extended credit to these countries.

The House Banking and Commerce Committees and the Senate Banking Committee have jurisdiction over many aspects of the banking and finance issues covered above. The House and Senate Judiciary Committees address bankruptcy. The House and Senate Agriculture Committees have primary jurisdiction over futures and the CFTC. This listing is not comprehensive of all the issues handled by these committees or of all the committees that may be involved in examining specific aspects of financial legislation.

### **Selected CRS Products**

CRS Issue Brief 97036. *The Year 2000 Computer Problem: Activity in the 105th Congress*, by Richard M. Nunno.

CRS Report 98-434. *The Asian Financial Crisis, the IMF, and Japan: Economic Issues*, by Dick K. Nanto.

CRS Report 97-835. *Encryption and Banking*, by M. Maureen Murphy.

CRS Report 96-983. *Monetary Policy: Current Policy and Conditions*, by Gail Makenin.