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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–551, Part 1

2004 DISTRICT OF COLUMBIA OMNIBUS AUTHORIZATION ACT

JUNE 17, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 3797]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 3797) to authorize improvements in the operations of the government of the District of Columbia, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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29–006

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 3797, the first annual omnibus authorization bill for the District of Columbia, would authorize improvements in the operations of the government of the District of Columbia.

BACKGROUND AND NEED FOR LEGISLATION

The Government Reform Committee has jurisdiction over the municipal affairs of the District of Columbia. In order to foster a better working relationship between the District of Columbia and Congress, the Committee has initiated an annual or biannual authorization process that would provide the District with a vehicle with which to move needed changes in the federal laws governing the District of Columbia.

SECTION-BY-SECTION

Section 1. Short title

This Act may be cited as the "2004 District of Columbia Omnibus Authorization Act."

Section 2. Requiring submission of plan by school board for allocation of funds under Mayor's proposed budget

This section would provide for a "budget reconciliation" requirement for the DC school system. Currently, the Mayor and the Council establish spending caps for the School Board's budget, but the DC Home Rule Act prohibits the Mayor and the Council from altering any of the budget decisions made by the School Board. This section would provide for the Mayor and Council to request reconciled budgets from the schools after the District's budget process is completed.

Section 3. Multiyear contracting authority and leasing agreements for District of Columbia courts

This section would authorize the court to (1) enter into severable services contracts for periods crossing fiscal years (similar to GSA's authority); (2) enter into multiyear leasing agreements up to 10 years for property (GSA is authorized to enter into 20 year leases) and multiyear contracts for goods and services not to exceed $5 million (GSA is authorized to enter into contracts not to exceed $10 million). This section also includes a procedure for cancellation or termination for insufficient funding after first year, similar to federal government cancellation procedures.

Section 4. Establishment of academic year as fiscal year for DC schools

This provision would change the annual budget cycles for the public school system, the charter schools and the University of the District of Columbia to an academic year (from a fiscal year) beginning with the FY2007 budget cycle.

Section 5. Extension of deadline for council to adopt budget to account for days of recess

This language would provide the Council with an additional 6 days with which to review the budget. The DC Home Rule Act states that "The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government." Given the timeframe of the District's budget process, the weeklong Spring recess, which is scheduled around Easter just like Congress's recess, falls in the middle of the 50-day review period.

Section 6. Exemption of DC government employees on compressed schedule from Federal overtime requirements

This section would exempt District government employees from the Fair Labor Standards Act, enabling DC to offer alternate work schedules (flextime rather than overtime) to employees, similar to federal employees. This section would take effect upon date of enactment.

Section 7. Availability of enforced annual leave or enforced leave without pay for Corporation Counsel attorneys

This section would give the District's Corporation Counsel the ability to place an attorney on forced leave, while an investigation is underway in the case where an attorney may have engaged in misconduct. In accordance with Home Rule provisions, Congressional action is necessary for this provision to apply to pre-1980 employees. This section would take effect upon date of enactment.

Section 8. Regulation of DC banks by Federal Deposit Insurance Corporation

This section would transfer the oversight of DC-chartered banks from the Office of the Comptroller of the Currency to the Federal Deposit Insurance Corporation. In all 50 states, state-chartered banks are regulated by the FDIC and the state banking regulator, and nationally-chartered banks are regulated by the Office of the Comptroller of the Currency (OCC). In DC, however, DC-chartered banks would be regulated by the OCC rather than the FDIC. Although there were no DC-chartered banks in existence at the time the Committee considered this legislation, District officials explained that three banks have expressed interest in applying for DC charters, but have not yet done so because of the burden of being regulated differently than their state-chartered banks in other states. This section would take effect upon date of enactment.

EXPLANATION OF AMENDMENTS

The Committee adopted no amendments.

COMMITTEE CONSIDERATION

On February 26, 2004, the Committee met in open session and ordered favorably reported the bill, H.R. 3797, by voice vote, a quorum being present.

ROLLCALL VOTES

No roll call votes were held.

CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, June 17, 2004.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN DAVIS: I am writing to confirm our mutual understanding with respect to consideration of H.R. 3797, the 2004 District of Columbia Authorization Act, which the Committee on Government Reform reported on February 26, 2004. This bill was referred to the Committee on Government Reform, and in addition to the Committees on Education and the Workforce and Financial Services. Section 6, Exemption of District of Columbia Employees on Compressed Schedule from Federal Overtime Requirements, amends the Fair Labor Standards Act and is within the sole jurisdiction of the Committee on Education and the Workforce.

Given the fact that I support the policy contained in Section 6, I do not intend to ask for continued referral of H.R. 3797, nor will I object to the scheduling of this bill for consideration in the House of Representatives. However, I do so only with the understanding that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. Furthermore, should these or similar provisions be considered in a conference with the Senate, I would expect Members of the Committee on Education and the Workforce be appointed to the conference committee on those provisions.

Finally, I would ask that you include a copy of our exchange of letters on this matter in your report to accompany this bill. If you have questions regarding this matter, please do not hesitate to call me. I thank you for your consideration.

Sincerely,

JOHN A. BOEHNER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, June 17, 2004.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter regarding the Education and the Workforce Committee's jurisdictional interest in H.R. 3797, the 2004 District of Columbia Authorization Act. As you have stated, Section 6 exempting certain District of Colum-

bia employees from overtime regulation under the Fair Labor Standards Act is within the jurisdiction of your Committee.

I agree that the Education and Workforce Committee does not waive its jurisdiction over H.R. 3797 by waiving further consideration of the bill. In addition, I will support your request for conferees from the Government Reform Committee should a House-Senate conference on this or similar legislation be convened.

As you have requested, I will include a copy of your letter and this response as part of the Government Reform Committee's report and the Congressional Record during consideration of the legislation on the House floor. Thank you for your assistance as I work towards the enactment of H.R. 3797.

Sincerely,

TOM DAVIS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, March 9, 2004.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform,
Rayburn House Office Building, Washington, DC.

DEAR TOM: On February 26, 2004, the Committee on Government Reform ordered reported H.R. 3797, the 2004 District of Columbia Omnibus Authorization Act. As you know, the Committee on Financial Services was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under Rule X of the Rules of the House of Representatives over banks and banking. Section 8 of the bill addresses the regulation of banks chartered by the District of Columbia by the Federal Deposit Insurance Corporation.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R 3797 or related legislation.

I request that you include this letter and your response as part of your committees report on the bill and the Congressional Record during consideration of the legislation on the House Floor.

Thank you for your attention to these matters.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, March 9, 2004.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter regarding the Financial Services Committee's jurisdictional interest in H.R. 3797, the 2004 District of Columbia Authorization Act. As you have stated, Section 8 regarding the regulation of banks chartered by the District of Columbia by the Federal Deposit Insurance Corporation is within the jurisdiction of your Committee.

I agree that the Financial Services Committee does not waive its jurisdiction over H.R. 3797 by waiving further consideration of the bill. In addition, I will support your request for conferees from the Financial Services Committee should a House-Senate conference on this or similar legislation be convened.

As you have requested, I will include a copy of your letter and this response as part of the Government Reform Committee's report and the Congressional Record during consideration of the legislation on the House floor. Thank you for your assistance as I work towards the enactment of H.R. 3797.

Sincerely,

TOM DAVIS,
Chairman.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 4012. Article I, Section 8, Clauses 17 and 18 of the Con-

stitution of the United States provide Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3797. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3797 from the Director of Congressional Budget Office:

H.R. 3797—2004 District of Columbia Omnibus Authorization Act

Summary: H.R. 3797 would amend various federal laws applicable to the operation of the District of Columbia (D.C.) government, including provisions that would increase monitoring of city and school budgets, establish the academic year as the fiscal year for D.C. schools, offer alternative work schedules for D.C. government employees, and modify the regulation of banks chartered in the District. CBO estimates that those provisions would have no significant impact on the federal budget.

CBO estimates that enacting section 3 would increase federal direct spending by about $20 million over the 2004–2014 period because it would authorize the Executive Officer of the D.C. Courts to enter into 10-year building leases regardless of whether the D.C. Courts have sufficient appropriated funds available for such a lease. Under the National Capital Revitalization and Self-Government Improvement Act of 1997, the budget of the D.C. Courts system is funded through federal appropriations, and its expenditures

are recorded on the federal budget. Enactment of the bill would not affect federal revenues.

The bill contains no private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Section 2 of H.R. 3797 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3797 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING											
Leasing Authority for D.C. Courts:											
Estimated Budget Authority	20	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	*	2	2	2	2	2	2	2	2	2	2
CHANGES IN SPENDING SUBJECT TO APPROPRIATION											
Leasing Authority for D.C. Courts:											
Estimated Authorization Level	*	−2	−2	−2	−2	−2	−2	−2	−2	−2	−2
Estimated Outlays	*	−2	−2	−2	−2	−2	−2	−2	−2	−2	−2

Note.—* = less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the bill be enacted near the end of fiscal year 2004. Most of the bill's provisions that would directly affect operations of the city government have been passed by the Council of the District of Columbia and signed by the Mayor. Under the Home Rule Act, any legislation enacted by the city must be approved by the Congress. CBO estimates that those provisions would not have a significant effect on the federal budget.

H.R. 3797 would authorize the D.C. Courts to enter into agreements with nonfederal entities to lease commercial or special-purpose property. Such agreements could obligate the federal government for up to 10 years without regard to provisions of the Anti-Deficiency Act. Thus, the government's obligations could occur in advance, or in excess, of appropriated amounts. The legislation thereby provides contract authority—the authority to obligate funds in advance or in excess of appropriations to cover the obligation.

Based on information from the D.C. Courts, CBO expects that the agency would use the authority in H.R. 3797 to enter into an operating lease for temporary office space during renovations to the J. Carl Moultrie Courthouse at an estimated cost of about $20 million over the next 10 years. Assuming that this lease would qualify as an operating lease under the government's scorekeeping guidelines, and if it did not contain a cancellation clause, budget authority would be recorded in the budget in the year of enactment equal to the estimated total payments expected over the full term of the lease. (If the lease contract were to contain a cancellation clause, only the budget authority that would be necessary for annual lease payments would be recorded in the budget. For the first year of the lease, the budget also would record an amount sufficient to cover costs associated with cancellation.)

Because the authority is not limited to a particular project or purpose, it is possible that the D.C. Courts could use the authority in this bill to lease special-purpose facilities specifically constructed for use by the D.C. Courts. If appropriated funds are not available for the planned C Street expansion to the H. Carl Moultrie Courthouse, it is possible that the D.C. Courts could use the authority provided in H.R. 3797 to enter into lease-purchase agreements to facilitate new construction to allow the consolidation of the Family Court and related services. For such agreements, the budget records the full cost of the federal obligation when the leases are initially approved. Using information from the Master Plan for Judiciary Square, the General Accounting Office, and the General Services Administration, CBO estimates that such a new addition would cost $63 million. At this time, however, we have no basis for predicting whether the authority that would be provide by H.R. 3797 would be used for such an addition, and we have not included those costs in this estimate.

Intergovernmental and private-sector impact: H.R. 3797 contains no private-sector mandates as defined in UMRA. Section 2 of H.R. 3797 contains an intergovernmental mandate because it would require the District of Columbia's School Board to submit a comprehensive budget plan to the Mayor and the City Council. This new requirement constitutes a mandate, but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). CBO estimates that the remaining provisions in the bill would benefit the District of Columbia by increasing the flexibility of personnel policies and providing for multiyear contracting authority.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA HOME RULE ACT

* * * * * * *

TITLE IV—THE DISTRICT CHARTER

* * * * * * *

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

* * * * * * *

FISCAL YEAR

SEC. 441. [The fiscal year] *(a) IN GENERAL.—Except as provided in subsection (b), the fiscal year* of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. [However, the fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.]

(b) EXCEPTIONS.—

(1) ARMORY BOARD.—The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.

(2) SCHOOLS.—Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia shall begin on the first day of July and end on the thirtieth day of June of each calendar year.

* * * * * * *

ENACTMENT OF APPROPRIATIONS BY CONGRESS

SEC. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. Except as provided in section 445A(b), section 467(d), section 471(c), section 472(d)(2), section 475(e)(2), section 483(d), and section 490(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

* * * * * * *

ANNUAL BUDGET FOR THE BOARD OF EDUCATION

SEC. 452. [With respect to] *(a) ROLE OF MAYOR AND COUNCIL.—With respect to* the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the

various programs under the jurisdiction of the Board of Education. [This section] *This subsection* shall not apply with respect to the annual budget for any fiscal year which is a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995).

(b) PLAN FOR ALLOCATION OF FUNDS UNDER PROPOSED BUDGET.—

(1) SUBMISSION OF PLAN TO COUNCIL.—Not later than March 1 of each year or the date on which the Mayor makes the proposed annual budget for a year available under section 442 (whichever occurs later), the Board of Education shall submit to the Council a plan for the allocation of the Mayor's proposed budget among various object classes and responsibility centers (as defined under regulations of the Board).

(2) CONTENTS.—The plan submitted under this subsection shall include a detailed presentation of how much money will be allocated to each school, including—

(A) a specific description of the amount of funds available to the school for which spending decisions are under the control of the school; and

(B) a specific description of other responsibility center funds which will be spent in a manner directly benefiting the school, including funds which will be spent for personnel, equipment and supplies, property maintenance, and student services.

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TITLE 11, DISTRICT OF COLUMBIA CODE

* * * * * * *

Chapter 17—Administration of District of Columbia Courts

Sec.

SUBCHAPTER I—COURT ADMINISTRATION

11–1701. Administration of District of Columbia court system.

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SUBCHAPTER III—DUTIES AND RESPONSIBILITIES

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11–1742a. Multiyear contracting authority and leasing agreements.

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SUBCHAPTER III—DUTIES AND RESPONSIBILITIES

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§ 11–1742a. Multiyear contracting authority and leasing agreements

(a) SEVERABLE SERVICES CONTRACTS FOR PERIODS CROSSING FISCAL YEARS.—The Executive Officer may enter into a contract for procurement of severable services in the same manner and to the same extent as the head of an executive agency may enter into such a contract under section 303L of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l).

(b) MULTIYEAR LEASING AGREEMENTS.—

(1) AUTHORITY.—The Executive Officer may enter into a lease agreement for the accommodation of the District of Columbia courts in a building which is in existence or being erected by the lessor to accommodate the District of Columbia courts.

(2) TERMS.—A lease agreement under this subsection shall be on terms the Executive Officer considers to be in the interest of the Federal Government and the District of Columbia and necessary for the accommodation of the District of Columbia courts. However, the lease agreement may not bind the District of Columbia courts for more than 10 years and the obligation of amounts for a lease under this subsection is limited to the current fiscal year for which payments are due without regard to section 1341(a)(1)(B) of title 31, United States Code.

(c) MULTIYEAR CONTRACTS.—

(1) AUTHORITY.—The Executive Officer may enter into a multiyear contract for the acquisition of property or services in the same manner and to the same extent as an executive agency may enter into such a contract under section 304B of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c). In applying such authority—

(A) in section 304B(a)(2)(B)—

(i) "the best interests of the District of Columbia and the Federal Government" shall be substituted for "the best interests of the United States"; and

(ii) "the courts' programs" shall be substituted for "the agency's programs";

(B) the second sentence of section 304B(b), and subsection (e), shall not apply; and

(C) in section 304B(c), "$5,000,000" shall be substituted for "$10,000,000".

(2) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

* * * * * * *

SECTION 1–608.56 OF TITLE 1, DISTRICT OF COLUMBIA CODE

§ 1–608.56. Disciplinary action for attorneys other than Senior Executive Attorneys

(a) Notwithstanding subchapter XVI–A, a Legal Service attorney, other than a Senior Executive Attorney, shall be subject to disciplinary action, including removal, suspension, [or reduction in grade,] *reduction in grade, or the placing of such attorney on en-*

forced annual leave or enforced leave without pay, for unacceptable performance or for any reason that is not arbitrary or capricious.

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

SEC. 3. As used in this Act—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) BANK.—The term "bank"—

(A) means any national bank[, State bank, and District bank] *and State bank*, and any Federal branch and insured branch;

* * * * * * *

[(4) DISTRICT BANK.—The term "District bank" means any State bank operating under the Code of Law of the District of Columbia.]

* * * * * * *

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(1) the Comptroller of the Currency, in the case of any national banking association[, any District bank,] or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of—

(A) any State member insured bank [(except a District bank)],

* * * * * * *

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank [(except a District bank),] or a foreign bank having an insured branch; and

* * * * * * *

SEC. 7. (a)(1) Each insured State nonmember bank [(except a District bank)] and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and

that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

* * * * * * *

SEC. 10. (a) * * *

(b) EXAMINATIONS.—

(1) * * *

(2) REGULAR EXAMINATIONS.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank ⟦(except a District bank)⟧ or insured State branch of any foreign bank;

* * * * * * *

SEC. 11. (a) * * *

* * * * * * *

(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

(2) FEDERAL DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT.—

(i) CONSERVATOR.—The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution ⟦or District bank⟧ and the Corporation may accept such appointment.

(ii) RECEIVER.—The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution ⟦or District bank⟧ by the appropriate

Federal banking agency, notwithstanding any other provision of Federal law (other than section 21A of the Federal Home Loan Bank Act) [or the code of law for the District of Columbia].

* * * * * * *

(3) INSURED STATE DEPOSITORY INSTITUTIONS—

(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR.—Whenever the authority having supervision of any insured State depository institution [(other than a District depository institution)] appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

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SEC. 18. (a) * * *

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(c)(1) * * *

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank [or a District bank];

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank [(except a District bank)];

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except [a District bank or] a savings bank supervised by the Director of the Office of Thrift Supervision); and

* * * * * * *

(d)(1) No State nonmember insured bank [(except a District bank)] shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank [(except a District bank)] shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

* * * * * * *

(f) Whenever any insured depository institution (except a national bank [or a District bank]), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any rec-

ommendation not complied with: *Provided,* That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

* * * * * * *

(i)(1) No insured State nonmember bank ⟦(except a District bank)⟧ shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

⟦(A) the Comptroller of the Currency if the resulting bank is to be a District bank;⟧

⟦(B)⟧ *(A)* the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank ⟦(except a District bank)⟧;

⟦(C)⟧ *(B)* the Corporation if the resulting bank is to be a State nonmember insured bank ⟦(except a District bank)⟧; and

⟦(D)⟧ *(C)* the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.

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SECTION 203 OF THE NATIONAL HOUSING ACT

INSURANCE OF MORTGAGES

SEC. 203. (a) * * *

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(s) Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this title, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

(1) * * *

* * * * * * *

(5) if the mortgagee is a national bank ⟦or District bank⟧, or a subsidiary or affiliate of such a bank, the Comptroller of the Currency;

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BANK HOLDING COMPANY ACT OF 1956

DEFINITIONS

SEC. 2. (a) * * *

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(c) BANK DEFINED.—For purposes of this Act—

(1) * * *

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[(3) DISTRICT BANK.—The term "District bank" means any bank operating under the Code of Law for the District of Columbia.]

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ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

(b)(1) NOTICE AND HEARING REQUIREMENTS.—Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association [or a District bank], or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten or more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring

expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing not withstanding any recommended disapproval by the appropriate supervisory authority.

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SECTION 2 OF THE BANK PROTECTION ACT OF 1968

SEC. 2. As used in this Act the term "Federal supervisory agency" means—

(1) The Comptroller of the Currency with respect to national banks [and district banks],

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DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

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SEC. 207. This title shall be administered and enforced by—

(1) the Comptroller of the Currency with respect to national banks [and banks located in the District of Columbia],

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SEC. 209. Regulations to carry out this title, including regulations that permit service by a management official that would otherwise be prohibited by section 203 or section 204, if such service would not result in a monopoly or substantial lessening of competition, may be prescribed by—

(1) the Comptroller of the Currency with respect to national banks [and banks located in the District of Columbia],

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SECURITIES AND EXCHANGE ACT OF 1934

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DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

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(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank [or a bank operating under the Code of Law for the District of Columbia], or a subsidiary or a department or division of any such bank;

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(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank [or a bank operating under the Code of Law for the District of Columbia], or a subsidiary of any such bank;

* * * * * * *

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank [or a bank operating under the Code of Law for the District of Columbia] when the appropriate regulatory agency for such clearing agency is not the Commission;

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(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank [or a bank operating under the Code of Law for the District of Columbia];

* * * * * * *

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank [or a bank operating under the Code of Law for the District of Columbia];

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(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank[, a bank in the District of Columbia examined by the Comptroller of the Currency,] or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

* * * * * * *

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank [or a bank in the District of Columbia examined by the Comptroller of the Currency];

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REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) * * *

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(i) In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks [and banks operating under the Code of Law for the District of Columbia] are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, (3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to savings associations the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Office of Thrift Supervision. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

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ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a) * * *

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(f)(1) * * *

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(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks [and banks operating under the Code of Law for the District of Columbia];

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank [or a bank operating under the Code of Law for the District of Columbia]; and

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SECTION 6 OF THE NATIONAL BANK RECEIVERSHIP ACT

[SEC. 6. That all savings-banks or savings and trust companies organized under authority of any act of Congress shall be, and are hereby, required to make, to the Comptroller of the Currency, and publish, all the reports which national banking-associations are required to make and publish under the provisions of section fifty two hundred and eleven, fifty-two hundred and twelve and fifty two hundred and thirteen, of the Revised Statutes, and shall be subject to the same penalties for failure to make or publish such reports as are therein provided; which penalties may be collected by suit before any court of the United States in the district in which said savings banks or savings and trust companies may be located.]

SECTION 9 OF THE FEDERAL RESERVE ACT

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or continuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be canceled and paid for as provided in section 5 of this Act. Upon the merger or consolidation of a national bank with a

State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue.

Any such State bank which, at the date of the approval of this Act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal reserve bank except upon relinquishment of any branch or branches established after the date of the approval of this Act beyond the limits of the city, town, or village in which the parent bank is situated. *Provided, however,* That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village [(except within the District of Columbia)].

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