1990

FIRREA: What Would George Bailey Think?

Alvin C. Harrell, Oklahoma City University School of Law

Available at: https://works.bepress.com/alvin_harrell/287/
the product can be offered in the future. Consumers Union recently filed a lawsuit\(^{23}\) against the Federal Reserve Board alleging that the regulations promulgated by the Federal Reserve Board conflict with the statute in failing to require home equity lenders that offer programs with variable interest rates to disclose the margin they use. The regulations only require the lender to disclose the index which it uses in connection with a variable rate home equity line of credit. The lawsuit also alleges that the regulations are unlawful in allowing lenders to unilaterally change terms on home equity lines of credit in circumstances beyond those prescribed in the statute. Consumers Union challenges the provision in the regulation permitting lenders to suspend advances of credit during any period the rate cap is reached.\(^{24}\) Consumers Union also challenges the part of the regulation permitting creditors to give disclosures about any “repayment” period (i.e., when advances are no longer made and the consumer is paying off the amount borrowed) at the time the repayment period begins rather than at the time of application. The Federal Reserve Board recently requested comment on whether these provisions should be changed.\(^{25}\)

In May of last year, the Oregon intermediate appellate court decided Tolbert v. First National Bank of Oregon.\(^{26}\) That decision interprets the Oregon Supreme Court’s holding in Best v. United States National Bank of Oregon\(^{27}\) to mean that a bank’s NSF charges may be attacked as being so high as to constitute “bad faith,” even if the bank has disclosed the charges to its customers and allows them to terminate their accounts after notification. The duty of good faith, the court concluded, limits the bank’s actions throughout the customer relationship.

B. Administrative Developments

The Federal Reserve Board has recently finalized changes to the Official Staff Commentary of Regulation Z dealing with home equity lines of credit, credit cards, and other issues.\(^{28}\) A group of lawyers on the Committee had prepared an extensive comment letter regarding the earlier proposal to change the Commentary.

The Women’s Business Ownership Act of 1988, which amended the Equal Credit Opportunity Act, was passed in part to address the erroneous (but apparently widespread) belief that the Equal Credit Opportunity Act and Regulation B did not apply to business or commercial loans. The Federal Reserve Board recently finalized regulations implementing this new statute.\(^{29}\) Among other things, the regulation requires that commercial lenders must provide business loan applicants having annual gross revenues of $50 million or less per year a notice of their right to receive in writing written reasons for loan application rejections.

The U.S. Department of Treasury is designing a program that will electronically deliver federal benefits. Pilot programs have been established in some states. The Treasury expects to save a significant amount of money by implementing this program. They estimate that the cost of delivering a benefit payment by check is $2.6, while the cost of making a payment electronically is only $0.03. We expect that the Committee will be providing significant input in connection with the development of this program which raises a number of important legal and business issues.

---

Commentary on FIRREA: What Would George Bailey Think?

(Continued from back cover)

But the fact is that in the real world of financial system “reform” the public does not know, and has no way to understand, the ways in which federal laws, policies, and regulations have impaired the viability of institutions like the Bailey Building & Loan. That understanding may come only slowly, if at all, as the remaining community thrives around the country gradually decline and disappear in the aftermath of FIRREA.\(^{58}\)

It seems unlikely that there will be any George Bailey’s in the next generation; in an ironic twist of fate, Clarence the Angel’s “trick” (which showed George Bailey what Bedford Falls would have been like without the Bailey Building & Loan) seems likely to come true on a societal scale, courtesy of U.S. public policy.\(^{59}\) Of course, that will suit some people just fine: As one noted banker said, “I see no reason we need a savings loan industry.” Mr. Potter himself couldn’t have said it better.

The views expressed in this Commentary are solely those of the author, and perhaps George Bailey, and do not represent the Conference on Consumer Finance Law or its Governing Committee.

---


\(^{26}\) 122 P.2d 1373 (Or. App. 1989).

\(^{27}\) 714 P.2d 1049 (Or., 1986).


---

\(^{58}\) Modulate this with the myth that small institutions cannot compete. See e.g., White, supra note 7. See also Mason, Monopoly in Motion: The Railroads, 19 Office of Thrift Superv. J. 15, 21 (Dec. 1989) (“It’s Better”): This can then join the myths that “deregulation” and corruption in the industry caused the failure of the FSLIC.

\(^{59}\) For a more restrained analysis concerning some of these same issues, see Barth & Wint, supra note 2.

\(^{60}\) See McCarthy, supra note 42, quoting the chairman of a major bank holding company. Of course, no industry is guaranteed to survive. Consider this comment on the future of the railroad industry: The railroad industry now is at a critical juncture. Like other basic industries, it must restructure itself into viability. Or, like the rail passenger network of 50 years ago, it can shrivel and shrivel into a rural vestige that will have to be maintained to survive. The outcome will be determined in the next five years. Remarks, "Will History Repeat Itself?" Trains, June, 1989, at 52. Perhaps we should be asking the same question with regard to our regulated financial system.
Commentary on FIRREA: What Would George Bailey Think?

By Alvin C. Harrell

I. Introduction

In Frank Capra’s classic film, “It’s a Wonderful Life,” James Stewart portrays a well-intentioned thrift executive named George Bailey, who fights at great personal sacrifice against a variety of public and private interests to save the Bailey Building & Loan from recurring threats of destruction. Along the way he makes an immeasurable contribution to his community, the fictional Bedford Falls. In this role, reportedly Mr. Stewart’s favorite, George Bailey symbolizes the contributions that have been made by community thrifts and banks across the United States.¹

It has become fashionable to observe that this film is “pure Hollywood” and to contend that the modern corporate thrift bears little resemblance to the small Bailey Building & Loan portrayed in the film. In some instances this may be true, but as a general observation that contention is simply wrong.² This film is an American classic precisely because it reflects the timeless values and concerns of bank and thrift customers in middle America; despite certain (and usually well publicized) exceptions, much of America’s thrift industry remains dedicated to serving those needs, in many cases for the same reasons that motivated George Bailey. These mundane facts do not provide grist for television talk show hosts, and are no competition for the spate of titillating stories about a few thrift executive high-flyers with their corporate jets and yachts.³ But for many Americans George Bailey typifies the community thrift. So it might be interesting to consider: what would George Bailey think of FIRREA?

Ignoring the process of aging and a few other details, how would George Bailey react if he were running the Bailey Building & Loan in Bedford Falls today? Of course, no one can purport to speak for George Bailey (except, perhaps, Jimmy Stewart, who has not volunteered to comment on FIRREA). Still, from a general familiarity with the film, and with the additional benefit of some knowledge of the problems confronting a small thrift,⁴ we can hazard a guess at some of the things George Bailey might have to say about FIRREA and the future of the thrift industry in Bedford Falls. If George Bailey were to contemplate the prospects for the continued survival of his thrift in the years ahead, he might well begin by reminding himself of the inherent strengths that led to the birth and growth of the Bailey Building & Loan . . . .

II. Sources of Strength: The Economics of the Community Thrift

An experienced observer of the financial industry might note some irony in any expression of concern over the future of the community thrift. With its low cost of operation and its focus on community lending and development, traditionally among the most reliable of private investments, the Bailey Building & Loan ought to be assured of a long and prosperous life. These and other basic features of the community thrift should portend a continuing viability, even in the face of vigorous and diverse competition. For example, the low administrative costs associated with servicing a portfolio of consumer and mortgage loans (as compared with the much higher costs associated with managing a typical bank’s portfolio of short-term commercial loans) ought to mean that a community thrift is well equipped to compete with its low cost, largely unregulated competitors (including finance companies, mortgage bankers and money market funds). The fully amortized nature of most thrift mortgage loans should provide a safe and attractive operating cash flow,⁵ and should eliminate many of the risks of default associated with balloon payment arrangements and short-term single payment bank loans. In normal circumstances only a small portion of a thrift’s mortgage portfolio is originated in any given year, thus assuring that only a small part of that portfolio will be at risk as the result of a period of overly optimistic collateral valuations or an inflationary “bubble” in housing prices followed by a subsequent market decline. The ability of a thrift to service both the depositor and credit needs of its customers provides an

---

¹ Although Mr. Potter, the banker (portrayed by Lionel Barrymore) in Capra’s 1939’s ‘Mr. Deeds’ was depicted as a thrift executive, he was not a community banker. Unlike the ‘Bailey’ type of character seeking to preserve traditional values (and the independence of his bank) during the great depression, Potter was essentially an evil corporation and the film was meant to be a ‘anti-book.’ In fact, part of the storyline of ‘It’s a Wonderful Life’ is based on an earlier Capra film, ‘American Madness,’” which depicted a bank president as a ‘George Bailey’ type of character seeking to preserve traditional values (and the independence of his bank) during the great depression of the 1930s. The similarity between the two films suggests that Frank Capra took the story of a besieged banker from his earlier film, and superimposed upon it the situation of an angel mystifying some events in order to emphasize the contributions of that banker to his community. The role of Clarence, the angel, was drawn from a story entitled The Golden Gift that appeared in a popular magazine during World War II, and the role of the banker in ‘American Madness’ became that of the angel in ‘It’s a Wonderful Life.’ The function of these storylines and the talent of Jimmy Stewart worked a remarkable synergism, and the result is recognized today as a spectacular achievement in filmmaking, reportedly described by Jimmy Stewart as his favorite film. “Looking back over it, I can just seem that the picture means more to me than any other,” interview with Jimmy Stewart, The Real Thing, Vogue, June 1989, 235, at 237.

² More than half of the United States’ roughly 3,000 savings and loan associations have assets of less than $100 million, and thrifts hold more than half of all privately held residential mortgage loans. See, U.S. LEAGUE OF C.U. INST., SAVINGS INSTITUTION SOURCEBOOK 6, 46 (1988). Nearly three-fourths of thrift industry assets are mortgage-related, and most of this is in residential mortgages. See Buffett & Wran, Discs FIRREA Really Mean a New Industry?, 19 Office of Thrift Superv. J. 6, 7 (Dec. 1989) (footnote Buffet & Wran).

³ See, e.g., Easy Money: How Texas S&Ls Grew into a Lending Giant and Lost $1.4 Billion, Wall St. J., April 27, 1989, at 1A.

⁴ The author has been associated with a small savings and loan association in Oklahoma City since 1960. The author would like to acknowledge the assistance of his brother, Robert A. Harrell, a real estate appraiser and investment consultant in Los Angeles, California, in the preparation of this article.

⁵ In terms of cash flow, the principal balance of the typical fully-amortized loan has been recouped roughly half-way through the loan term and in any event most such loans are repaid well before maturity.
addelement of sympathy. While it is true that asset securitization and the secondary mortgage markets have diminished the importance of community lenders who originate mortgages, it is also true that a second, more important reason why a community lender should not be able to capture its own market niche through a combination of the benefits of originating, servicing, and holding its customers' mortgages and consumer loans and deposits.

Sizable indexed interest rate risk associated with fixed-rate mortgage loans can be minimized if moderate loan maturities and other common sense measures are utilized. For one thing, it is only prudent to provide an interest rate premium for fixed-rate loans with longer maturities, and absent extraordinary circumstances this premium should offset much of the interest rate risk inherent in mortgage lending. The ability of the Bailey Building & Loan to service at very low cost the cash flow from a diversified portfolio of fully amortized mortgage and consumer loans with average maturities of, say five to ten years means that, at worst, interest rate risk may be absorbed over a period of time in the range of three to five years. Even under a worst case interest rate scenario a thrift with a 3%-5% net worth ratio and a diverse portfolio of loans, liquid assets, and other investments ought to be able to survive and substantially reprice its assets over this time horizon: adjusting investment and real estate development activities (as a means to promote community development and to provide a cushion against inflation), and diversifying with high-yielding government and corporate securities and similar investments (to provide liquidity and diversity, and to help bolster the bottom line), and the community thrift would seem to be an ideal investment vehicle for meeting the financial challenges of the 1990s.

Of course, this is a description of the typical state-chartered community "building & loan" of the 1920s as it existed before depression-era "reforms" created a federal thrift industry essentially limited to long-term mortgage lending.6 In effect, this traditional thrift structure describes the Bailey Building & Loan as it existed during most of the first half of this century. Left alone, it should do just fine.

... an additional reason for concern with the small size of the Bailey Building & Loan. Almost any capital-based performance analysis will admit that a thrift with limited asset size, organizational capabilities, and experience in the real estate lending business will perform the larger ones, based on almost any yardstick except liability growth. Certainly the smaller institutions tend to be better capitalized, and they might some time, more carefully managed. There may be many reasons why this is so, but local ownership and management being an obvious one. There is a definite parallel with industries as a whole (as anyone who has compared a McDonald's hamburger to the food at a locally owned deli or diner can attest.) Finally, one should not overlook the high levels of job satisfaction that continue to draw competent people to these businesses. (Because their job security is not truly job security if the salaries at community thrifts that do.) Unlike many (and usually more heavily paid) occupations, the staff at a typical thrift are likely to have a daily and immediate satisfaction at the tangible benefits that it provides to the community.

In the case of George Bailey it took a visit from Clarence the Angel and some supernatural tricks7 to make all of this clear, but in most communities one can readily observe the significance of thrift activities that are encouraged by community development, have a daily and immediate satisfaction, and, oh fashioned though it may seem, individual savings and financial responsibility. Often very often, in fact, the community thrift may lend money to deserving citizens who cannot otherwise qualify for loans from a commercial bank or a mortgage banker or a government agency, just as George Bailey did. As a result, there are few activities that are as unquestionably beneficial to a community's economic health as the existence of a community thrift. If one can doubt anyone's ability to note this will be met with derision in some circles, where such mundane considerations have long since given way to a tide of cynicism. But in...
coarse one does not ask the taxpayers for billions of dollars without offering up something scathingly in return, and for the most part the coquis in the industry were already gone. But in the instances of the innominate members of the thrift industry, the George Bailey and the Bailey Building & Loan, were offered as scapegoats and became the targets of the industry's self-defense.

We don't know what George Bailey would think about all this. But the realization of it started to be in fact, the incoherence of the industry began to survey the new legal impediments to the survival of its modesteर enterprise, this is what he might find:

A. Adjustable-Rate Mortgages

The regulatory inflation with interest rate risk, as illustrated by Table 3, has led inexorably to other problems as well, including an unstandardized and poorly misjudged rates of return on fixed-rate mortgage lending. Of course if the thrift industry had been allowed to originate and hold adjustable-rate mortgage loans (AMLS) consistently since the 1960s, many of the losses of the 1970s and 1980s could have been avoided. It is understandable, then, that AMLS have become a kind of panacea for those seeking a simple and quick fix for the current problems of the thrift industry.

In a sense the AMLS problem is a corollary of the much broader and more fundamental of the current focus on interest rate risk. But in some areas AMLs programs have become part of the problem, rather than a solution, partly because of this factor, the situation serves as a reminder that regulation is a blunt instrument when it comes to matters of business judgment.

When Congress or a regulator decides that something is good, it is a natural inclination for subordinating within the system to conclude that a lot of something must be even better. By the time such a judgment is translated down through the regulatory pipeline and is imposed throughout the system, it tends to become an immeasurable law (or regulation, or at least a standard of "safety and soundness") that is "written in stone" as an absolute value, for purposes of examination and supervision, perhaps without reasonable limits or qualifications relating to its original purpose. By then the original concepts of the policy choices may be long forgotten. Because of the enforcement powers that stand behind such judgments, this can be a potent method of overwhelming the public with the worst excesses of political folly. FIRREA, however, makes it much less likely that George and his colleagues will be able to resist the pressures when perhaps the most egregious of all the misjudgments in FIRREA, lawyers who are turned into criminals, and codes that protect the regulations that have so badly misjudged economic conditions and business strategies in the past have been given greatly expanded powers to impose massive new civil and criminal penalties on any bank or thrift manager who should dare to cross similar legislative and regulatory misjudgments in the future.

It should be noted that thrift and bank institutions have been facing a variety of even draconian, enforcement powers, and that these powers have not always been used in an evenhanded or efficient manner. While these are few, they have been broad, and the regulatory standards are often subjectively applicable to certain banking violations.

The study is pretty heavy artillery to throw at George Bailey. He probably didn't realize that the Bailey Building & Loan is such a threat to the moral fabric of society as to warrant the involvement of the federal government in the Chamber.

Without doubt, however, the end result is that "the thrift bill . . . exponen- tially (magnifies) potential sanctions that investigators will be able to hold over the heads of subjects of federal investigations." The impact of imposing such draconian sanctions cannot be beneficial in terms of attracting talent and capital to the financial industry. To some extent, the problems of the FIRSCL during the last decade were exacerbated by the regulatory zeal of the thrift managers in the early 1980s. With a majority of thrifts insolvent by 1982, respectable investors and managers were naturally hesitant to stake their careers on the prospects for this industry; this left a pool of potential thrift acquirers and managers

B. Adjustable-Rate Mortgages

The regulatory inflation with interest rate risk, as illustrated by Table 3, has led inexorably to other problems as well, including an unstandardized and poorly misjudged rates of return on fixed-rate mortgage lending. Of course if the thrift industry had been allowed to originate and hold adjustable-rate mortgage loans (AMLS) consistently since the 1960s, many of the losses of the 1970s and 1980s could have been avoided. It is understandable, then, that AMLS have become a kind of panacea for those seeking a simple and quick fix for the current problems of the thrift industry.

In a sense the AMLS problem is a corollary of the much broader and more fundamental of the current focus on interest rate risk. But in some areas AMLs programs have become part of the problem, rather than a solution, partly because of this factor, the situation serves as a reminder that regulation is a blunt instrument when it comes to matters of business judgment.

When Congress or a regulator decides that something is good, it is a natural inclination for subordinating within the system to conclude that a lot of something must be even better. By the time such a judgment is translated down through the regulatory pipeline and is imposed throughout the system, it tends to become an immeasurable law (or regulation, or at least a standard of "safety and soundness") that is "written in stone" as an absolute value, for purposes of examination and supervision, perhaps without reasonable limits or qualifications relating to its original purpose. By then the original concepts of the policy choices may be long forgotten. Because of the enforcement powers that stand behind such judgments, this can be a potent method of overwhelming the public with the worst excesses of political folly. FIRREA, however, makes it much less likely that George and his colleagues will be able to resist the pressures when perhaps the most egregious of all the misjudgments in FIRREA, lawyers who are turned into criminals, and codes that protect the regulations that have so badly misjudged economic conditions and business strategies in the past have been given greatly expanded powers to impose massive new civil and criminal penalties on any bank or thrift manager who should dare to cross similar legislative and regulatory misjudgments in the future.

It should be noted that thrift and bank institutions have been facing a variety of even draconian, enforcement powers, and that these powers have not always been used in an evenhanded or efficient manner. While these are few, they have been broad, and the regulatory standards are often subjectively applicable to certain banking violations.

The study is pretty heavy artillery to throw at George Bailey. He probably didn't realize that the Bailey Building & Loan is such a threat to the moral fabric of society as to warrant the involvement of the federal government in the Chamber.

Without doubt, however, the end result is that "the thrift bill . . . exponen- tially (magnifies) potential sanctions that investigators will be able to hold over the heads of subjects of federal investigations." The impact of imposing such draconian sanctions cannot be beneficial in terms of attracting talent and capital to the financial industry. To some extent, the problems of the FIRSCL during the last decade were exacerbated by the regulatory zeal of the thrift managers in the early 1980s. With a majority of thrifts insolvent by 1982, respectable investors and managers were naturally hesitant to stake their careers on the prospects for this industry; this left a pool of potential thrift acquirers and managers...
that contained more than in proportionate share of speculators, gamblers, and even outright crooks. But George Bailey might be apt to point out that criminalizing lenders' business practices even further, by pushing discretionary fines and criminal penalties for even minor errors is not likely to increase the activity of the new industry for bona fide investors and competent managers.

In a regulatory regime where complex and ever-changing regulatory rules make technical transgressions inevitable, this kind of enforcement overkill can only encourage a flight of human and financial capital from the new industry. George Bailey's objection to the new regulatory framework resulted from a legitimate concern over the health of the deposit insurance system, and administration fears as to what Congress might do if FIERREA is followed by yet another such crisis. But in this instance the overkill is likely to be counterproductive. Not only will these new penalties make it more difficult for the industry to attract new capital, to pay its share of the FSIC bailout bill, and even to survive. The specter of close scrutiny will scare off many of the candidates willing to play a role who include a disproportionate number of speculators, incompetents and scoundrels. Who else but a speculator or a quick buck artist would be willing to risk so much? Only the gambler hoping for a big payoff can rationally afforded to take this kind of risk with his own capital. George Bailey would be likely to retire, or to seek employment elsewhere.37

D. Qualified Thrift Lender Test

As a precursor to FIERREA, the Competitive Equity Banking Act of 1987 ("CEBA") required thrifts to maintain over 60% of their assets in "qualifying investments" (mostly housing-related investments, plus liquid assets up to 30% of assets) in order to meet the "Qualified Thrift Lender" ("QTL") test.38 However, thrifts which failed the test lost only their eligibility to receive FHLB advances and the activities exemp-

37. See supra note 10 and infra note 41 to text for analysis.
38. See supra note 10 and infra note 41 to text for analysis.
39. See supra note 10 and infra note 41 to text for analysis.
40. See supra note 10 and infra note 41 to text for analysis.
41. See supra note 10 and infra note 41 to text for analysis.
42. See supra note 10 and infra note 41 to text for analysis.
43. See supra note 10 and infra note 41 to text for analysis.
44. See supra note 10 and infra note 41 to text for analysis.
45. See supra note 10 and infra note 41 to text for analysis.
closed or sold (or subjected to some combination thereof), insolvent thrifts just seem to go on forever, sucking up federal subsidies and raising the costs of funds for their private competitors.

Partly this is the result of a continuing lack of the funds needed to close down or sell all of the insolvent thrifts, and no doubt numerous thrifts will be sold as more funds become available. But some of the problems that stymied the FSLIC are now confronting the RTC. Among these is the inherent difficulty of satisfying all of the interests that come into play when the government tries to sell public assets to private parties. This was amply illustrated by the storm of protest that greeted the sales of a few insolvent thrifts at the end of 1988. Critics who had harped for years at FSLIC for not taking action on insolvent thrifts were suddenly enraged that FSLIC sought to utilize what tools it had in arranging the disposition of a few of its problem cases.

George Bailey might have noted with some amusement the evolution of government control of his insolvent competitors, not by way of gloating at their plight but rather as a case study in the politics of deposit insurance. No doubt he would have noted that in a typical case the government would first take control of an insolvent thrift while leaving management in place, by imposing various operating agreements that essentially ceded control to the regulators. Then one morning he would read in the newspaper that the Board of Directors of the thrift had replaced the old management, often by hiring some theretofore unknown out-of-state management team with close ties to the regulators. Next he would note that, perhaps one by one, the Board members would be replaced in a similar manner.

Ultimately the institution would be placed in the "management consignment program," and the regulators would replace the management and Board again. Then, at some later point, George would read in the paper that the institution had been "sized" by the FSLIC, once again with the promise that now things were going to be different because of the new expertise of still another management team.

All of this might have reminded George of the Soviet "five year plans" of the Stalin era through the 1960s, when each new five year plan was hailed as promising the dawn of a new era. Each subsequent failure was then blamed on the errors of the previous administrators, and was to be remedied by the appointment of a new group of better administrators. But somehow nothing ever seemed to change.52

Similarly, at each stage of the process of government takeover of an insolvent thrift, George's local newspaper would report optimistic expectations that the mess was finally being cleaned up, along with subtle (or not so subtle) denunciations blaming previous management for the problems. But somehow nothing would ever change -- the typical insolvent thrift went right on paying up to 200 extra basis points on savings and soaking up funds from healthy competitors, at a frightful cost to the industry and the taxpayer. Then one day George would read in the newspaper that it was all the fault of the FSLIC, and that now everything was going to be all right because the FDIC had taken control. Somehow one doubts that George would be impressed.53

What will become of all of these "zombie" thrifts? The difficulty and controversy of selling even a few thrifts in 1988, when tax breaks helped make the deals attractive for both sides, casts doubt on the prospects for an early privatization of all of the remaining thrifts. The tax breaks have been largely eliminated, and FIRREA diminishes the attractiveness of the thrift industry as an investment vehicle and as a career choice. Of course some thrift deposits can be sold to banks, but there are only so many banks with the capital and management expertise to justify that kind of rapid expansion, and this still leaves the government holding the assets of the failed thrift. There will always be a few large investors or vulture funds or industrial or bank holding companies seeking diversification at a bargain price, and the sheer leverage of the giant deals will lure some speculators into the game, so there will always be some market for the massive, subsidized sales favored by the regulators.54 But all of this may not be sufficient to clear the regulators' inventory (and it will certainly be unlikely to bring any new George Baileys into the business).

There remains some doubt whether current political, statutory, and financial constraints will allow regulators the leeway to offer deals attractive enough to induce legitimate, long term investors and managers to embrace this business. The disincentives built into the system by FIRREA and the current regulatory structure are enough to make any rational candidate think twice about adding his or her name to the list of thousands whose careers have been tainted or ruined by association with this industry. It may take the lure of fantastic speculative profits or the promise of enormous synergism through cross-marketing to overcome these doubts, and even this may not be enough. What if the regulators hold a party and nobody comes?55

If nationalized financial institutions become a permanent part of our financial landscape, providing unfair competition for private companies while being subsidized by those same institutions, it will be the final nail in the coffin of the Bailey Building & Loan.56

(Continued on page 212)

52. The willingness to believe that each new set of administrators can do a better job than the last, and the tendency to blame all failures on the deficiencies of past management, is not limited to the economic sphere. Two historians have recently noted similar tendencies in the context of military operations: "The impulse to explain military failure in terms of human error is a characteristic theme of each of the two wars.... [T]he role of the organizational dimension... has been strangely neglected... [T]he urge to find, excerpt, judge, and nameless culpable individuals has led to preoccupation as well as historian's blame for very much more than the [house] over which they exercised a sizable degree of control.... Constructing military misfortune in this way by attributing a guilty party... is really little more than a concealed admission of perplexity.... This is no more a cry of deeper moral self-criticism than an explanation... " E.A. COHEN & GOCHIS, MILITARY MISFORTUNES — THE ANALOGY OF THE PERSIAN WAR 6-8 (1980). See also, RTC Hsbs, supra note 29.

53. The Wall Street Journal recently reported that the Resolution Trust Corporation was preparing to sell packages of insured CDs to institutional investors, as much the same way that bondled CDs were used to prop up insolvent thrifts before FIRREA. It was noted that once again this will raise the cost of funds for all participants concerned. See RTC Consider Sale of CDs Requiring Brokern Brokerage Deposits to Raise Insured Funds Wall St. J., Jan. 18, 1990, at A20.

54. See, e.g., White, supra note 7, citing reports that some pension funds are considering investments in multi-billion dollar packages of insured thrifts as an alternative to investing in leveraged buyout funds.


56. One personal example among many comes to mind. A deal that was lost, but had been shaped up by a key-bid package, was taken over by the government. Within days the deal began a high-profile publicity campaign advertising higher-than-market interest rates. See advertisement, Daily Okla., May 10, 1990, at 14, noting that the tougher rate "reflects the new philosophy of... Savings, and gives you more reasons to place your confidence... and savings here... [Your certificate is backed by its full faith and credit of the government, making them [sic] as safe and secure as U.S. Treasury Bills and Savings Bonds."