# A FEDERAL DEPOSITORY INSTITUTIONS LIFE INSURANCE SYSTEM

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## I. INTRODUCTION

Throughout the twentieth century, two primary criticism have been made of the sale of individual life insurance policies.[1] First, the cost of selling individual life insurance policies has been criticized for being extraordinarily high.[2] Second, an extraordinarily high percentage of whole life poli-

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1. In 1981, life insurance issued by U.S. legal reserve life insurance firms was owned by approximately 86% of American families. AMERICAN COUNCIL OF LIFE INS., LIFE INSURANCE FACT BOOK 6 (1982). Approximately 149,000,000 individual life policies, with amounts in force of $1,978,080,000,000 had been issued. *Id.* at 5, 15, 17, 19, 23. In 1981, approximately 123,000,000 group life insurance certificates, with amounts in force of $1,888,612,000,000 had been sold. *Id.* at 5, 15, 17, 19, 27.

2. Aggregate expense data for 1981 were published by the American Council of Life Insurance. These data showed that operating expenses (defined as commissions to agents and home and field office expenses) equalled 14.8% of all premium and investment income. AMERICAN COUNCIL OF LIFE INS., *supra* note 1, at 61. This percentage far understates the actual expense of selling individual policies. The aggregate figures employed by the Council combines totals for the sale of individual life insurance policies, group life, industrial life and credit life as well as for the sale of annuities. A Federal Trade Commission staff study, employing 1977 data, estimated that life insurance firm expenses and profits equalled 30.6% of all premium plus investment income for individual policy sales. FTC, STAFF REPORT, LIFE INSURANCE COST DISCLOSURE, *reprinted in FTC Study of Life Insurance Cost Disclosure: Hearings Before the Senate Comm. on Commerce, Science, and Transportation*, 96th Cong., 1st Sess. 158 (1979).

cies[3] lapse in their initial years causing the forfeiture of some or all of the policyholder's savings.[4] Nonetheless, since the publication in 1966 of Professor Belth's *The Retail Price Structure in American Life Insurance*,[5] most efforts to reform the sale of individual life insurance policies have focused on improving disclosure to consumers.[6]

This article proposes an alternative approach, which is more likely to substantially reduce the cost of selling individual life insurance policies and to substantially reduce the rate of forfeiture of policyholders' savings than a

3. There are two basic types of life insurance: "term" and "whole life." "Term" insurance provides a death benefit if the insured dies within a specified period (typically one, five, or ten years). A one-year $25,000 term policy, for example, obligates the insurance company to pay a beneficiary $25,000 if the insured dies within that one year. If the insured does not die, the policy has no monetary value.

By contrast, "whole life" insurance provides both a death benefit and a savings plan. Unlike the premiums for term insurance, whole life premiums do not go up with age but remain constant throughout the payment period. The premiums for a whole life policy are initially much higher than those for term insurance for the same amount of insurance protection. Part of the higher payment made in the early years of a whole life policy is invested by the insurance company. This "savings component" of the whole life plan makes it possible to maintain insurance premiums at a constant rate throughout the life of the policy. The "savings component" also has a cash value to the insured. Typically, by contract an insured may borrow against his whole life "savings" at a low rate of interest or cash in the policy and receive a specified percentage of the face (or death benefit) amount. At age 100, most whole life policies will pay the insured 100% of the death benefit. If the insured dies before age 100, the beneficiary receives the full death benefit, not the death benefit plus the investment account. *See generally id.* at 151-55; S.S. Huebner & H. Black, Life Insurance 66-91 (10th ed., 1982).

As of 1981, 58% of individual life insurance policies were whole life. By contrast, 99.5% of group policies were term. American Council of Life Ins., *supra* note 1, at 19, 25.

4. *See infra* text accompanying notes 169-73.

5. J. Belth, The Retail Price Structure in American Life Insurance (1966).

6. A summary of the cost disclosure debate during the period of 1968 to 1980 prepared by the associate general counsel of the American Counsel of Life Insurance appears in Meyerholz, *Life Insurance Cost Disclosure: A Decade Just Completed*, 15 Forum 889 (1980). The most significant events in this cost disclosure debate were the extensive hearings led by Senator Hart, *The Life Insurance Industry: Hearings Before the Subcomm. on Antitrust & Monopoly of the Senate Judiciary Committee*, 93rd Cong., 2d Sess. (1973-1974) [hereinafter cited as *Life Insurance Industry Hearings*]; later hearings, *Life Insurance Marketing and Cost Disclosure: Hearings Before the Subcomm. on Oversight & Investigations of the House Comm. on Interstate & Foreign Commerce*, 95th Cong., 2d Sess. (1978) [hereinafter cited as *Life Insurance Marketing & Cost Disclosure Hearings*]; a report prepared by a House Subcommittee chaired by Congressman Moss, Subcomm. on Oversight & Investigation of the House Comm. on Interstate & Foreign Commerce, 95th Cong., 2d Sess., Life Insurance Marketing and Cost Disclosure 72 (Comm. Print 1978); an FTC report, FTC, *supra* note 2; and the insurance industry's efforts to improve disclosure, Meyerholz, *supra* note 6, at 891-901. *See also*, Marble, *Federal Regulation of Life Insurance by the Federal Trade Commission*, 30 Fed'n of Ins. Counsel 319 (1980); Newton, *The Misleading Report on Life Insurance Cost Disclosure of the Federal Trade Commission Staff*, C.L.U.J. 12 (Oct. 1979). In 1980, the Federal Trade Commission's authority to investigate the business of life insurance was severely limited by Pub. L. No. 96-252, 94 Stat. 374 (1980), a fact which may help account for the paucity of recent legal literature concerning the life insurance industry.

program of improved disclosure. This approach would create a federal depository institutions life insurance system utilizing the model of state savings bank life insurance programs currently employed in Massachusetts,[7] New York[8] and Connecticut.[9] Particularly in Massachusetts, where the dollar limitation on the amount of life insurance that can be sold to an individual is over twice the amount that currently can be sold in New York or Connecticut,[10] the cost to consumers of savings bank life insurance is dramatically lower than the cost of the least expensive insurance firm policies.[11] These lower consumer costs are the inevitable result of the Massachusetts Savings Bank Life Insurance (SBLI) system's lower expenses. The Massachusetts SBLI system pays no sales commissions to agents,[12] has dramatically lower lapse rates than competitive insurance firms,[13] and reduces overhead costs by sharing facilities with banks.[14] The Massachusetts SBLI system also has substantially reduced policyholder forfeitures, in part because of a statutory section that prohibits forfeiture of a policy for nonpayment of a premium after six months' premiums have been paid.[15] However, because state savings bank life insurance programs do not employ agents, but instead wait for consumers to signify interest in purchasing SBLI, the percentage of life insurance sales made by banks has always been small.[16]

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7. MASS. GEN. LAWS ANN. ch. 178 (West Supp. 1982-1983).

8. N.Y. BANKING LAW § 261 (McKinney Supp. 1983-1984).

9. CONN. GEN. STAT. § 36-142, (1983).

10. MASS. GEN. LAWS ANN. ch. 178, § 10 (West Supp. 1982-1983), limits the amount of savings bank life insurance that can be sold on any one life to an amount equal to one thousand dollars multiplied by each savings bank in the state operating an insurance department. Since there are 64 such banks, which currently or previously operated an insurance department, the policy limit is $64,000. N.Y. BANKING LAW § 266 (McKinney Supp. 1983-1984) provides a $30,000 limit for individual policies. CONN. GEN. STAT. § 36-142 (5)(a) (1983) currently sets a limit of $25,000 for individual policies.

11. *See infra* text accompanying notes 157-68.

12. MASS. GEN. LAWS ANN. ch. 178, 13 (West Supp. 1982-1983). This section does permit payment to agencies that collect premium payments of a fee specified by the commissioner of insurance and the commissioner of banks. Currently the agency fee equals two percent of the premium. Interview with Francis Pizzella, President, Massachusetts Savings Bank Life Insurance Council, in Boston, Massachusetts (Mar. 3, 1983).

13. *See infra* text accompanying note 169.

14. The lower expenses of savings bank life insurance are documented in *Tie-ins of the Sale of Insurance by Banks and Bank Holding Companies: Hearings Before the Senate Comm. on Banking, Housing & Urban Affairs*, 96th Cong., 1st Sess. 271-72 (1979) [hereinafter cited as *Tie-ins of the Sale of Insurance by Banks and Bank Holding Companies*]; D. JOHNSON, SAVINGS BANK LIFE INSURANCE 174-75 (1963); J. LINTNER, MUTUAL SAVINGS BANKS IN THE SAVINGS AND MORTGAGE MARKETS 194-206 (1948); A.T. MASON, THE BRANDEIS WAY 270-71 (1938); BERMAN, DEPT. OF LABOR BULLETIN No. 615, THE MASSACHUSETTS SYSTEM OF SAVINGS-BANK LIFE INSURANCE 25-26, 48-50 (1935).

15. MASS. GEN. LAWS ANN. ch. 178, § 11 (West Supp. 1982-1983).

16. In 1981, the Massachusetts SBLI program sold $437,000,000 of the $10,114,000,000 of life insurance sold in Massachusetts, or 4.3%. In that same year, New York SBLI sales equaled

This article is made up of five key parts. Part II, presents a description of the life insurance business and recent criticisms made of it. Part III describes state savings bank life insurance programs. Part IV proposes a federal depository institutions life insurance system. Part V explains the advantages of a federal depository institutions life insurance system. Part VI analyzes the likely objections that would be made to such a system. An appendix to this article contains the draft of a federal depository institutions life insurance bill.

## II. Background: The Life Insurance Business

The essence of the life insurance business is risk-sharing: the losses of those who die prematurely are shared by a pool of individuals exposed to the same risk of premature death. For example, the probability of a 35 year-old male dying during his thirty-fifth year is calculated in one widely used table of mortality to be 0.251%.[17] If a pool of 1,000 thirty-five year-old

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2.2% ($622,000,000 of $28,678 billion sold in New York); and Connecticut SBLI sales equaled 2.4% ($175,000,000 of $7,345,000,000 sold in Connecticut). American Council of Life Ins., *supra*, note 1, at 9, 101. Writing in 1963, Professor of Finance Donald Johnson observed that Massachusetts savings banks have "never been able to account for as much as 6% of the yearly new life insurance business produced in that state." D. Johnson, *supra* note 14, at 134.

Nonetheless, the state SBLI systems are among the largest "firms" selling life insurance in their respective states. In Massachusetts, as the following data shows, the Massachusetts SBLI system was the fourth largest seller of individual life insurance (by amount in force) in the state.

*Massachusetts Individual Life Insurance in Force, End of 1982, Top Ten Firms**

| | *Massachusetts Ordinary Life Insurance in Force, End of 1982* | |
|---|---|---|
| Company | Policies | Amount |
| John Hancock | 1,010,727 | $5,725,685 |
| Prudential | 576,451 | 5,056,628 |
| Metropolitan | 734,689 | 4,618,013 |
| Mass. Savings Bank | 682,284 | 3,130,548 |
| New England Mutual | 83,457 | 2,414,316 |
| New York Life | 103,594 | 2,174,528 |
| Mass. Mutual | 63,663 | 1,856,563 |
| Northwestern Mutual | 58,465 | 1,713,456 |
| Mutual Life of N.Y. | 39,207 | 1,164,724 |
| Connecticut Mutual | 36,080 | 1,047,114 |

*This data was provided by Francis Pizzella, President of Massachusetts Savings Bank Life Insurance Council. The figures were obtained from the 1982 Annual Reports filed with the Massachusetts Department of Insurance. *See also* Belth, *Savings Bank Life Insurance Policies and Market Shares*, 38 J. Risk & Ins. 193 (1971).

17. See data in the *Commissioners 1958 Standard Ordinary Table of Mortality reproduced in* S.S. Huebner & K. Black, *supra* note 3 at 305.

males sought to purchase one-year term life insurance policies with a coverage amount of $10,000 per policy, then an insurer could determine rates in the following manner. First, the total death benefits to be paid would be calculated by multiplying the number of probable deaths (2.51, i.e. .00251 times 1,000 policyholders) times the individual death benefit ($10,000), equaling a total of $25,100. Second, this amount would be reduced by the amount of interest that would be collected from the time of receipt of payment until the time of payment. For example, assume all payments are promptly paid on the first day of the year and deaths are equally distributed throughout the year. If the interest earned by the insurer was ten percent per year, and the average death occured exactly mid-way through the year, then an insurance pool of only $23,904.76 need be collected ($25,100 discounted by ten percent interest for one-half year). Third, the expenses of the insurer then would be added to the total death benefit amount. Typically, these expenses would include agents' commissions, medical examination costs, the expenses of approving applications, preparing policies and setting up records. Arbitrarily, assume that total expenses for sale of one-year term policies to 1,000 thirty-five year-old males would equal $10,000. Fourth, an allowance for contingencies must be added. While the mortality rate employed suggests the average expected rate of death, the actual number of claims will vary from the expected rate in any given year. The amount of variance will decrease as the size of the risk pool increases (e.g., the probability of actual claims being with five percent of expected claims is 18.2% if 1,000 lives are insured; eighty-nine percent if 50,000 lives are insured; and 99.99% if 1,000,000 lives are insured[18]). Since 1,000 policyholders is a small pool, arbitrarily, collect twenty-five percent more than the interest-adjusted total death benefit (25% times $23,904.76 equals $5,976.19) as protection against a higher than expected death rate. Fifth, a premium for each policyholder then can be calculated by dividing the interest-adjusted total of death benefits ($23,904.74) plus expenses ($10,000) plus contingency margin ($5,976.19) by the number of policies (1,000). Here the annual premium cost would be $39.88 for each $10,000 policy. Typically, the actual death benefit costs will be less than the total of expected death benefits plus a contingency margin. Many life insurers will reimburse to policyholders part of the difference between actual death benefit costs and the amounts collected for expected death benefits and contingency margins through the payment of dividends.[19]

Actuarial calculations of life insurers are more complex than those in this illustration because of the different types of life insurance sold, different ages of policyholders, different numbers of policyholders in each risk class and so on. But the illustration does suggest the primary reasons why

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18. *Id.* at 301-03.
19. *Id.* at 404-09.

life insurance firms have different costs. All life insurers must establish a death benefit fund. The size of the fund will vary depending on the qualifications applicants must possess to be insured by a particular fund. For example, a life insurer which does not require a medical examination assumedly will experience a higher rate of mortality than one that does. Regardless of how the life insurer defines its qualifications, it will be required to maintain a fund to honor all valid death claims.

Similarly, life insurers will have somewhat different contingency surpluses. As noted, the proportionate size of the contingency surplus will shrink as the number of policyholders increases. This means that the initial premium cost can be reduced as the number of policyholders increases. It also means that the risk of a life insurer suffering an unexpected large loss diminishes as the number of policyholders increases.

However, since part of the contingency surplus frequently is returned to policyholders in the form of dividends, the major variable expense is operating costs. In 1981, the American Council of Life Insurance reported that the operating costs of U.S. Life Insurance Companies equaled 14.8% of premium and investment income.[20] Some sense of the variability of operating costs is suggested by data in the Federal Trade Commission's 1979 Staff Study of Life Insurance Cost Disclosure which reported that the operating costs of group life insurance averaged only 8.4% of the operating costs of individual life insurance sales.[21] In part, because of this cost advantage, nearly as much group life insurance is in force today as individual life insurance.[22] Forty years ago, group life was responsible for only sixteen percent of

20. American Council of Life Ins., *supra* note 1, at 61.

21. FTC, *supra* note 2, at 156-57, n.32 reported that individual policies had average agent commissions of $1.97 and home office expenses of $3.02 per $1,000 of coverage. Group policies averaged commissions of 12¢ and home office expenses of 30¢ per $1,000 of coverage. Group costs are lower because only one sale is made to the group rather than sales to each individual; usually, no medical examination is made; a master contract is issued with certificates to the insureds rather than full policies; and the cost of collection of premiums are reduced by forwarding a single bill typically to an employer rather than bills to each individual insured. S.S. Huebner & K. Black, *supra* note 3, at 478-95.

22.

*Life Insurance in Force:*
*A Comparison of Individual and Group Life sales, 1940-1981*

| | *Individual* | | *Group* | |
|---|---|---|---|---|
| | *Amount* | *Percent* | *Amount* | *Percent* |
| 1940 | $ 79,346 | 84 | $ 14,938 | 16 |
| 1950 | 149,116 | 76 | 47,798 | 24 |
| 1960 | 341,881 | 66 | 175,903 | 34 |
| 1970 | 734,730 | 57 | 551,357 | 43 |
| 1980 | 1,760,474 | 53 | 1,579,355 | 47 |
| 1981 | 1,978,080 | 51 | 1,888,612 | 49 |

American Council of Life Ins., *supra* note 1, at 15. This table omits industrial and credit life sales.

individual and group sales.[23]

Within the half of the life insurance market represented by sales to individuals, cost competition has not been effective. Since Belth's pioneering work,[24] critics of the industry regularly have been able to identify an unusually high range of price dispersion in life insurance sales.[25] Among other points, the degree of life insurance dispersion appears to be larger than that found with many other products.[26] Moreover, there is no clear correlation between policy costs and market shares.[27] As the Federal Trade Commission Staff Study complained, "Price competition is so ineffective in the life insurance industry that companies paying twenty-year rates of return of two percent or less compete successfully against companies that pay four to six percent. This disparity should be contrasted with the banking industry, where differences of a quarter of a percent are considered to be competitively crucial."[28]

The serious question is why should life insurance cost competition be so ineffective? The life insurance market appears to be imperfect primarily for three reasons. First, life insurance consumers frequently do not understand basic information about available policies.[29] Second, because consumers have difficulty comparing policy costs, they do not engage in comparative shopping.[30] Third, consumers tend to rely on agents to advise them concern-

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23. *See supra* note 22.

24. J. BELTH, *supra* note 5, at 236-39 summarizes Belth's conclusions concerning price dispersion.

25. *See* FTC, *supra* note 2, at 197-204; 121 CONG. REC. 21476 (1977), (statement of Sen. Philip Hart). *See also Life Insurance Marketing and Disclosure Hearings*, *supra* note 6, at 205-20, 509-22; Kimball & Rapaport, *What Price Price Disclosure? The Trend to Consumer Protection in Life Insurance*, 1972 WIS. LAW REV. 1025-27; R. MEHR, LIFE INSURANCE THEORY AND PRACTICE 147-49 (1977).

26. *See* FTC, *supra* note 2, at 204-07.

27. *Id.*at 207-10.

28. *Id.* at 147.

29. Consumer ignorance in the life insurance field is pervasive. The Federal Trade Commission staff report cited a study conducted by the insurance industry which indicated that more than half the persons questioned in one opinion survey could not distinguish between the premium payments made for life insurance and its actual cost. *Id.* at 225. In two other surveys conducted by the insurance industry, 43% and 67% of the respondents could not describe the differences between term and whole life insurance. *Id.* at 229, 313. More sophisticated data, such as how to employ the surrender cost index, could only be understood by five percent of the respondents to a 1976 Prudential Insurance Company survey. *Id.* at 313. These types of findings earlier led the distinguished life insurance actuary Moorhead to comment on

> the massive ignorance of policyholders about their life insurance. It is hard to believe that people know as little about their life insurance property as the surveys show. How can it be that fewer than one insured out of six can correctly distinguish between a participating policy and a nonparticipating policy?

Moorhead, *The Hart Hearings in Perspective*, in BEST'S REVIEW LIFE/HEALTH EDITION 14, 16 (Jan. 1974). *See also* 121 CONG. REC. 21,478 (1977) (statement of Sen. Philip Hart).

30. The INSTITUTE OF LIFE INSURANCE AND LIFE INSURANCE MARKETING AND RESEARCH ASSOCIATION, LIFE INSURANCE CONSUMERS: A NATIONAL SURVEY OF COST COMPARISON ATTITUDES

ing their life insurance needs. But the agent is hardly a disinterested fiduciary. Frequently agents will encourage consumers to purchase whole life because it pays larger commissions rather than term life insurance.[31] When policyholders are young, the amount of term life insurance that can be purchased per premium dollar may be as much as five or more times the amount of whole life. The agent's emphasis on whole life thus may result in the young policyholder being underinsured.[32] A second measure of the often unsatisfactory advice given new policyholders is the high rate of forfeiture of whole life policies during the first or second year after purchase.[33]

Many commentators, cognizant of these imperfections in the life insurance market, have concluded that the appropriate regulatory response is improved cost disclosure.[34] There are reasons, however, to be skeptical that

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AND EXPERIENCE 17-18 (1975) reported that six of every ten life insurance consumers made no cost comparisons. Of the four in ten who did compare life insurance policy costs, 43% compared two insurers, 35% compared three insurers, and only 18% compared four or more firms. *Id.* It is difficult to evaluate how valuable these cost comparisons may have been. Some 58% of those who claimed to have compared costs, in fact, compared premium outlays alone. *Id. See also* FEDERAL TRADE COMMISSION, *supra* note 2, at 217-30.

31. See FTC, *supra* note 2, at 235-39 for data on how the commission structure creates financial incentives for the sale of whole life. *See also* Dorfman, *Regulation in Life Insurance Agents—Compensation* 43 J. RISK & INS. 447, 450 (1976), which reports that the first-year commissions paid by 68 firms equaled 36.20% of term insurance premiums and 53.50% of whole life insurance premiums for firms in New York State; and 39.14% of term insurance premiums and 62.06% of whole life insurance premiums for firms that did not operate in New York State. *See also Life Insurance Marketing and Cost Disclosure Hearings, supra* note 6, at 12.

32. A leading report on the adequacy of insurance coverage was the Life Underwriter Training Council and Life Ins. Agency Mgmt. Ass'n, *The Widow's Study* (1970), *reprinted in Life Insurance Industry Hearings, supra* note 6, at 313 et seq. Data were collected in 1968 and 1969 by interviewing 1,944 widows whose husbands had died in 1966. *Id.* The characteristics of the families studied closely paralleled those of families in an age-equivalent segment of the population. *See id.* at 316-17. Approximately 92% of the widows said their husbands had been protected by some form of life insurance; on average, the widows received approximately $8,200 in lump sum payments from life insurers and a total of $11,900 from all sources, including settlements under employee retirement plans, VA and social security funeral benefits, gifts, and the sale of possessions and businesses. Simultaneously, widows faced average final expenses of $3,900. *Id.* Only 8% of the widows were beneficiaries of $25,000 of life insurance. *Id.* Some 52% received less than $5,000 in benefits. *Id.* As a consequence, it was estimated that a widow faced a 50-50 chance of undergoing a decline in living standards if her husband died prematurely. *See id.* at 8, 316-322, 363, 399.

In its staff study, the Federal Trade Commission reexamined this issue for the year 1977 and found that little had changed. *See* FTC, *supra* note 2, at 211-16. Between 1966 and 1977, average personal disposable income doubled, from $8,200 in 1966 to $16,400 in 1977. *Id.* The average death claim per policy in 1977 was only $4,465, an increase of $1,100 since 1966. *Id.* The FTC estimated that if decedents were insured under three policies, the average death benefit from ordinary insurance would equal 10 months of the average disposable income per family. *Id.*

33. *See infra* text accompanying notes 169-73.

34. Besides the FEDERAL TRADE COMMISSION, in its Staff Report, *supra* note 2, and BELTH,

improved cost disclosure alone will make much difference in the sale of individual life insurance policies. In securities regulation it is conventional wisdom that relatively few investors actually read prospectuses. A larger number make investment decisions based on advice from their brokers. The data in prospectuses are "filtered" through the broker to the investor.[35] Even with improved life insurance cost disclosure, it is reasonable to assume that a large proportion of policyholders will not carefully read documents concerning their policies. Instead, potential life insurance purchasers, like securities investors, will rely on life insurance sales personnel to explain alternative available policies. The key, therefore, to a more rational life insurance market is not more informative written material alone, but, rather the combination of more informative written material and disinterested advice from life insurance sales personnel.

Moreover, even if improved cost disclosure did lead to substantially more rational life insurance purchasing decisions, it is worth underlining what disclosure alone would not accomplish. While disclosure might lead to increased sales by insurers with the lowest costs, disclosure alone would not reduce the costs of the most efficient insurers. Competition in the sale of individual life insurance policies would continue to be waged by firms paying agents' commissions and other substantial operating expenses.

By contrast, the alternative approach to the sale of individual life insurance policies proposed in this article directly addresses the reliance of insurance purchasers on sales personnel and the high operating costs of life insurance firms when making individual sales. The proposed approach would substitute salaried personnel for the insurance firm's commissioned agents in providing insurance advice, and reduce operating costs by eliminating agents' commissions, lowering lapse rates and sharing overhead facilities with existing firms. And, it is worth emphasizing, the proposed approach currently is being employed in three states and has an impressive record of successful operation.

## III. State Savings Bank Life Insurance

Although proposals to combine banks and life insurance sales were made at least as early as 1807 in the English House of Commons,[36] savings bank life insurance effectively began in this country exactly one century

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*supra* note 5, other recent critics of the life insurance industry that have emphasized cost disclosure include Consumer's Union, Consumer's Reports 187-88 (March 1980) and the late Senator Philip Hart. *See* 121 Cong. Rec. 21,475-85 (1977) (statement of Sen. Philip Hart).

35. *See, e.g.*, House Interstate & Foreign Commerce Comm., 95th Cong., 1st Sess, Report of the Advisory Committee on Corporate Disclosure to the SEC, X, 290, 299 (Comm. Print 1977).

36. The history of SBLI from 1807 to the Massachusetts enactment is described in D. Johnson, *supra* note 14, at 6-9; A.T. Mason, *supra* note 14, at 116-21; C. Casady, Massachusetts Savings Bank Life Insurance 6-7 (1934).

later with the adoption by Massachusetts of the first state Savings Bank Life Insurance statute in 1907.[37] The "father" of the Massachusetts law was Louis Brandeis. Indeed Brandeis subsequently would label savings bank life insurance, his "greatest achievement."[38]

The immediate inspiration for the proposals of Brandeis was the scandalously high cost and high lapse rates of industrial insurance.[39] The term "industrial insurance" is a euphemism for small whole life policies, on which the premiums normally were collected weekly, usually at the home of the insured. When Brandeis wrote a 1907 law review article, the average industrial insurance policy was about $140. As of January 1, 1906, industrial insurance accounted for 16,872,583 policies or three-fourths of all level premium policies then outstanding in the United States.[40] The 1905 Armstrong Commission[41] investigated the industrial insurance sales of Metropolitan Life Insurance Company and Prudential Insurance Company of America, which wrote over four-fifths of the industrial insurance policies issued in the United States in 1904.[42] The cost of a Metropolitan industrial insurance policy was found to be practically double a policy sold by the ordinary depart-

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37. Ch. 561, 1907 Mass. Acts.

38. A.T. Mason, Brandeis: A Free Man's Life 177 (1946) (quoting L. Brandeis). One measure of Brandeis's commitment to SBLI was his willingness to appear in a silent film telling the story of savings bank life insurance in human interest terms. *See* Mason, *supra* note 14 at 243. The role of Brandeis in the 1907 enactment by Massachusetts of SBLI is evident from his several contemporaneous writings. *See* Brandeis, *Wage-Earners' Life Insurance*, Collier's, (Sep. 15, 1906) *reprinted in* A.T. Mason, *supra* note 14, at 311-25; *Life Insurance: The Abuses And The Remedies*, Address by Louis Brandeis before the Commercial Club, Boston (Oct. 26, 1905) *reprinted in* L. Brandeis, Business—A Profession 115-59 (1925); Brandeis, *Savings Bank Life Insurance for Wage Earners*, 69 Alb. L. Rev. 50 (1907); 1 Letters of Louis D. Brandeis 381-95, 448-49, 540-41 (M. Urofsky & D. Levy ed. 1971); 2 Letters of Louis D. Brandeis 14-15, 300-05, 590-600. On the history of savings bank insurance see generally D. Johnson, *supra* note 14; A.T. Mason, *supra* note 14, at 153-77; Berman, *supra* note 14; Casady, *supra* note 36; J. Lintner, *supra* note 14, at 176-210; and Senate Temporary Nat'l Economic Comm., 76th Cong., 3d Sess., Study of Legal Reserve Life Insurance Companies, Monograph No. 28 (Comm. Print 1940).

39. *See, e.g.*, Letter from Louis Brandeis to Walter Channing Wright (Nov. 24, 1905), *reprinted in* 1 Letters of Louis D. Brandeis, *supra* note 38, at 381, "I am convinced that the greatest wrong committed in connection with the present conduct of life insurance is through industrial insurance, and that mainly on account of the extraordinarily heavy expense attendant upon the methods employed." See similar statement in Letter from Louis Brandeis to Norman Hapgood (June 25, 1906), *reprinted in* 1 Letters of Louis D. Brandeis, *supra* note 38, at 448.

40. Brandeis, *Savings Bank Life Insurance for Wage Earners*, 69 Alb. L. Rev. at 50-51. On industrial insurance, see also Brandeis, *Wage Earners' Life Insurance*, *supra* note 38; Brandeis, *Life Insurance: The Abuses and the Remedies*, *supra* note 38; A.T. Mason, *supra* note 14, at 110-14.

41. Report of the Joint Comm. of the Senate and Assembly of the State of New York Appointed to Investigate the Affairs of Life Insurance Companies, Assembly Doc. No. 41 (1906) [hereinafter cited as Report of the Joint Comm.]

42. *Id.* at 3-4.

ment. For example, a twenty-two year old could buy $984 of whole life through the industrial department for $31.20 a year or $1,000 worth of insurance through the ordinary department for $16.55.[43] Although all industrial department whole life policies issued by Metropolitan paid nothing if they lapsed within the first five years, the firm acknowledged industrial insurance lapse rates of thirty-four percent for the first year and fifty-eight percent for the first three years.[44] The results for Prudential were similar. Industrial department policies cost sixty percent more than ordinary department participating policies and approximately double the ordinary non-participating policies.[45] Between sixty-two and sixty-four percent of Prudential's industrial policies lapsed within three years.[46]

To Brandeis, the high cost and high lapse rates of industrial insurance were easily understandable. The agents and operating expenses of Metropolitan and Prudential industrial insurance in 1904 were over forty percent of all premium receipts.[47] In large measure, these expenses covered the cost of 12,000 to 13,000 agents and 3,000 assistant and full supervisors at Metropolitan and 8,582 agents and 1,974 supervisors at Prudential.[48] In lesser measure, those expenses covered the high salaries paid to these insurance firms' senior executives and the profits distributed to their shareholders.[49] By contrast, Brandeis calculated, the percentage of management expenses for new deposits in the 188 Massachusetts savings banks in 1904 was 1.47%.[50] Logically, it followed that if savings banks could sell life insurance without the expense of maintaining agents to solicit sales and collect premiums, the cost of life insurance could be reduced dramatically. The lower bank expense for selling life insurance, in addition, would make possible a statutory prohibition on the forfeiture of whole life savings after a minimum period of time.[51] Moreover, Brandeis conceived three further advantages to the bank sale of life insurance. First, the lower cost of SBLI would place a competitive pressure on the life insurance firms to reduce the costs of industrial insurance.[52]

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43. *Id.* at 301.
44. *Id.* at 306-08.
45. *Id.* at 331.
46. *Id.* at 333.
47. Brandeis, *Wage-Earners' Life Insurance*, *supra* note 38, at 313.
48. Report of the Joint Comm., *supra* note 41, at 313-14, 338.
49. *See* Brandeis, *Wage-Earners' Life Insurance*, *supra* note 38, at 316-17.
50. *Id.* at 314. In 1905, Brandeis calculated the expenses in the 189 Massachusetts savings banks to be 1.36%; or, 0.23% of their average assets. Brandeis, *Savings Bank Life Insurance for Wage Earners*, *supra* note 38, at 53.
51. *See* Brandeis, *Life Insurance: The Abuses and the Remedies*, *supra* note 38, at 149.
52. This advantage was envisioned two years before Massachusetts enacted its SBLI Statute. *See* Letter from Louis Brandeis to Walter Channing Wright (Nov. 24, 1905), *reprinted in* 1 Letters of Louis D. Brandeis, *supra* note 38, at 383. On December 10, 1909, Brandeis wrote Lincoln Steffens,

> For a period of at least twenty years prior to the inauguration of the savings bank insurance movement there has been no reduction in the premiums of industrial

Second, money paid for life insurance premiums to Massachusetts banks would be kept in Massachusetts, rather than circulated out-of-state by the life insurance firms.[53] Third, having no shareholders, mutual savings banks would sell life insurance as a "beneficient, not as a money-making" business, an important consideration to Brandeis who considered "the true nature of the life insurance business . . . is mainly to aid persons of small means."[54]

Building on these considerations, Massachusetts in 1907, New York in 1938[55] and Connecticut in 1941[56] adopted SBLI statutes.[57] In each state today, savings banks are given the choice of becoming issuers of life insurance,[58] of being agents of banks issuing life insurance,[59] or of not participating at all. When acting as issuers or as agents, savings banks may sell the same life insurance or annuities policies as life insurance companies in the relevant state.[60] There are, however, two important limitations on the power of savings banks to sell life insurance. First, all three states limit the dollar amounts of insurance which may be issued on any one life. Currently, in Massachusetts no policy holder may purchase an individual policy in excess of $64,000; in New York, the limit is $30,000; in Connecticut, $25,000.[61] Initially, Brandeis had favored a $500 limit on the amount of life insurance any bank could sell on any one life. In his view, this dollar limitation was wise because of the $1,000 limit on deposits in Massachusetts savings banks then

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> policies. In the three years since the movement was started, industrial insurance companies' premiums have been reduced on an average of 20%
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> . . . .

Letter from Louis Brandeis to Lincoln Steffens (Dec. 10, 1909) *reprinted in* 2 LETTERS OF LOUIS D. BRANDEIS, *supra* note 38, at 303. See similar statements in Letters from Louis Brandeis to S. Herbert Wolfe (Apr. 18, 1912), *reprinted in* 2 LETTERS OF LOUIS D. BRANDEIS, *supra* note 38, at 592; and in *The Successes of Savings Bank Life Insurance*, in BRANDEIS, BUSINESS—A PROFESSION, *supra* note 38, at 191.

53. 1 LETTERS OF LOUIS D. BRANDEIS, *supra* note 38, at 541.

54. Brandeis, *Life Insurance: The Abuses and the Remedies*, *supra* note 38, at 145. *See also* Brandeis, *Savings Bank Life Insurance For Wage Earners*, *supra* note 38, at 52, 55.

55. Ch. 471, 1938 N.Y. Laws __. On legislative history, see also, D. JOHNSON, *supra* note 14, at 28-39, 78-79, 174-75.

56. Ch. 191, 1941 Conn. Pub. Acts __. On legislative history, see also, D. JOHNSON, *supra* note 14, at 40-53, 72.

57. At least a dozen other states have considered adoption of an SBLI act, see SENATE TEMPORARY NAT'L ECONOMIC COMM., *supra* note 38, at 312-14 and D. JOHNSON, *supra* note 14, at 202-03. The life insurance industry's lobby was active in opposition to these proposals, generally, because of "a fear of competition from savings banks rather than the niceties of phraseology in any particular bill," as the SENATE TEMPORARY NAT'L ECONOMIC COMM., *supra* note 38, at 313-14, put it.

58. MASS. GEN. LAWS ANN. ch. 178, § 2 (West Supp. 1982-1983); N.Y. BANKING LAW § 262 (McKinney Supp. 1983-1984); CONN. GEN. STAT. § 36-142(2) (1983).

59. MASS. GEN. LAWS ANN. ch. 178, § 13 (West Supp. 1982-1983); N.Y. BANKING LAW § 269 (McKinney Supp. 1983-1984); CONN. GEN. STAT., § 36-142(4)(c) (1983).

60. MASS. GEN. LAWS ANN. ch. 178, § 6 (West Supp. 1982-1983); N.Y. BANKING LAW § 263 (McKinney Supp. 1983-1984); CONN. GEN. STAT. § 36-142(4)(a) (1983).

61. *See supra* note 10.

in effect; his desire to limit the risk of bank failure as a result of life insurance sales; and his desire to reduce life insurance industry opposition to SBLI.[62] Subsequently, life insurance lobbyists have employed the dollar limitation as a key means to constrict bank competition in the sale of life insurance. For example, until the law was amended in 1967, no person in New York could buy more than $10,000 of SBLI;[63] as late as 1976, no person could buy more than $5,000 of SBLI in Connecticut.[64] In Massachusetts, the statute long permitted any person to purchase life insurance in a total amount of $1,000 times the number of banks issuing SBLI. Until 1951, however, no individual bank could write a policy in an amount greater than $1,000. In 1950, this meant that a Massachusetts resident or employee could buy up to $34,000 in SBLI, but each of the 34 issuing banks would have to write a $1,000 policy. In 1951, the statute was amended permitting individual banks to write up to $5,000 in SBLI.[65] Only in 1982 was the statutory requirement that more than one issuing bank write a large policy fully eliminated.[66] Because all banks participating in the Massachusetts SBLI system have a single unified fund to pay death benefits,[67] the limitation on the amount of insurance each bank could write on any one life did not reduce the risk of its SBLI business, but instead added unnecessary expense to bank life insurance sales. The second important limitation on the power of banks to sell life insurance is the requirement that sales be limited to residents or persons regularly employed within the issuing state.[68]

The essence of the SBLI programs is the unification of mortality. As earlier explained, the larger the number of persons insured by a common fund, the more reliable will be the prediction of actual deaths in any given year. Rather than running the risk that each bank, some with a small number of policyholders, might be overwhelmed by an unexpectedly high number of death claims,[69] each of the three states provides a mechanism to en-

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62. 1 LETTERS OF LOUIS D. BRANDEIS, *supra* note 38, at 383; 2 *id.* at 599-600; A.T. MASON, *supra* note 14, at 221.

63. Ch. 650 § 1, 1967 N.Y. Laws __.

64. Ch. 354, § 1, 1977 Conn. Public Acts __.

65. Ch. 264, 1951 Mass. Acts __.

66. Ch. 276, 1982 Mass. Acts __. In 1976, the statute had been amended to permit each issuing bank to write $15,000 worth of SBLI on an individual life. Ch. 391, 1976 Mass. Acts __.

67. MASS. GEN. LAWS ANN. ch. 178, §§ 15, 15A (West Supp. 1982-1983).

68. *Id.* ch. 178, § 12; N.Y. BANKING LAW § 268 (McKinney Supp. 1983-1984); CONN. GEN. STAT. § 36-142(4)(d) (1983). In 1974, Consumers Union initiated an action to have the geographic limitation in New York's SBLI statute declared unconstitutional. A three-judge district court panel granted summary judgment for New York in 1977. Consumers Union v. Albright, 427 F. Supp. 840 (S.D.N.Y. 1977). After the Supreme Court vacated and remanded for further consideration in light of its decisions in *Hicklin v. Orbeck*, 437 U.S. 518 (1978), and *Consumers Union v. Heiman*, 437 U.S. 901 (1978), a three-judge district court again granted summary judgment for New York in 1980. Consumers Union v. Albright, No. 74, Civ. 234, slip op. (S.D.N.Y., Aug.. 14, 1980).

69. *See* Brandeis, *Wage-Earners' Life Insurance*, *supra* note 38, at 323-24.

sure that the policies issued by all banks within the state are guaranteed or reinsured by a common fund.[70] In Massachusetts, for example, each savings bank issuing policies monthly initially paid four percent of its premium income to the General Insurance Guaranty Fund.[71] Once a year, calculations are made of the ratio of actual to expected mortality claims at each bank. For each bank where the actual mortality experience is less than the expected mortality of all the banks combined, the bank makes a payment to the General Insurance Guaranty Fund. *Pro contra*, for each bank where the actual mortality exceeds expected mortality, a payment is made to the individual bank to cover the excess expense.[72] To ensure fairness and to economize, Massachusetts further requires that a state actuary provide standard insurance forms, standard application forms and standard premium rates[73] and that a state medical director supervise the acceptability of applicants at all banks.[74] This does not mean that the cost of life insurance at each savings bank will be identical. Although premium rates and death claims are standardized, each Massachusetts bank separately invests premium payments.[75] The dividends each bank pays to its policyholders will vary somewhat depending on the income earned by the bank on these investments and

70. In Massachusetts, the common fund is called the General Insurance Guaranty Fund and is described in MASS. GEN. LAWS ANN., ch. 178, §§ 14-15A, 17-18A, 23 (West Supp. 1982-1983). In addition, Massachusetts requires each bank to contribute $5,000 to establish a Special Expense Guaranty Fund, and $20,000 to establish a special insurance guaranty fund. *Id.* §§ 4-5. The $20,000 contribution to the Special Insurance Guaranty Fund can be and today, always is, waived, if the General Insurance Guaranty Fund grants a guaranty contract guaranteeing the risks of the new bank. *See id.* § 19. Interview with Francis Pizzella, in Boston, Massachusetts (Mar. 3, 1983). In New York, the common fund is called the Savings Bank Life Insurance Fund, N.Y. BANKING LAW §§ 262(b), 270-73a (McKinney Supp. 1983-1984). New York requires banks joining the SBLI system to contribute $20,000 to this fund until the fund has net assets exceeding $500,000, at which time the $20,000 contribution may be waived. *Id.* § 262-b. New York also requires each bank to contribute $20,000 to a surplus fund. *Id.* § 262-a. In Connecticut, the Savings Bank Life Insurance Company reinsures the risk of each policy. CONN. GEN. STAT. § 36-142(3) (1983). Each bank initially also may contribute $5,000 to a surplus fund. *Id.* § 36-142(4)(f).

71. MASS. GEN. LAWS ANN. ch. 178, § 18 (West Supp. 1982-1983). Exercising the discretion available in this section, the Trustees of the Massachusetts General Insurance Guaranty Fund ceased collecting this percentage of premium income in November 1968. Memorandum from Francis Pizzella, to the Trustees of the General Insurance Guaranty Fund and Directors of Savings Bank Life Insurance Company (Nov. 29, 1977) (on file with Mr. Pizzella).

72. MASS. GEN. LAWS ANN., ch. 178, § 15 (West Supp. 1982-1983). If necessary, disbursements to the bank may be made in advance of the annual settlement. *Id.* ch. 178, § 15A.

73. *Id.* ch. 178, § 15. Similar systems exist in New York, see N.Y. BANKING LAW § 271 (McKinney Supp. 1983-1984) and Connecticut, see CONN. GEN. STAT § 36-142(3)(b)-(i) (1983). See also Brandeis, *Wage-Earners' Life Insurance*, *supra* note 38, at 321-22.

74. MASS. GEN. LAWS ANN. ch. 178, § 16 (West Supp. 1982-1983). See also N.Y. BANKING LAW § 271 (McKinney Supp. 1983-1984); CONN. GEN. STAT. § 36-142(3)(i) (1983).

75. MASS. GEN. LAWS ANN. ch. 178, § 9 (West Supp. 1982-1983). See similar provisions in New York, N.Y. BANKING LAW § 265 (McKinney Supp. 1983-1984) and Connecticut, CONN. GEN. STAT. § 36-142(4)(e) (1983).

the amount of the annual net profits set aside as surplus. In Massachusetts, by statute, no bank may retain more than fifteen percent of the net profits as surplus once surplus exceeds $20,000 unless the bank receives permission from the state actuary.[76]

Brandeis insisted that the investments and financial records of insurance departments be separated from other bank departments[77] and that principle is reflected in the laws of all three states today.[78] Generally, the insurance operations of banks are "subject to all the duties, liabilities and restrictions in respect to the conduct of the business of life insurance conferred or imposed by general laws relating to domestic legal reserve life insurance companies . . . ."[79] There are, however, certain exceptions to application of state insurance law to the insurance operations of banks. In all three states, SBLI funds must be invested subject to the restrictions on bank investments rather than to the more liberal rules regulating insurance firm investments.[80] In addition, only New York requires that the life insurance personnel of savings banks pass the written qualifying examination given to life insurance firm agents.[81]

Contrary to the assertions of Brandeis that bank life insurance sales should be a "beneficient, not a money-making" business, substantial numbers of banks in Massachusetts, New York and Connecticut issue SBLI because it is financially rewarding. This is true primarily for two reasons. First, by statute, an equitable proportion of bank overhead expenses are paid out of insurance premiums.[82] Usually, the percentage of a particular bank's overhead expenses charged to insurance operations is determined by the ratio of insurance assets to the total of insurance assets plus deposits in that particular bank.[83] Second, studies consistently have found that savings bank life insurance attracts new depositors for the bank. Moreover, savings bank life insurance policies and bank deposits initiated by SBLI depositors have

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76. MASS. GEN. LAWS ANN. ch. 178, § 21 (West Supp. 1982-1983). Permission to exceed fifteen percent of net profits has been granted in some recent years. Interview with Francis Pizzella, in Boston, Massachusetts (July 3, 1983). New York limits the surplus to the greater of $50,000 or 10% of policy reserves and policy liabilities. N.Y. BANKING ACT § 275 (McKinney Supp. 1983-1984). Connecticut generally limits the surplus to 10% of policy reserves and policy liabilities. CONN. GEN. STAT. § 36-142(4)(g) (1983).

77. Brandeis, *Wage-Earner's Life Insurance*, *supra* note 38, at 322.

78. MASS. GEN. LAWS ANN., ch. 178, § 8 (West Supp. 1982-1983). N.Y. BANKING LAW § 264 (McKinney Supp. 1983-1984); CONN. GEN. STAT. §§ 36-142(4)(b) (1983).

79. MASS. GEN. LAWS ANN., ch. 178, § 6 (West Supp. 1982-1983); N.Y. BANKING LAW § 263 (McKinney Supp. 1983-1984); CONN. GEN. STAT. 36-142(7)(a), (9) (1983).

80. MASS. GEN. LAWS ANN., ch. 178, §§ 9, 20 (West Supp. 1982-1983); N.Y. BANKING LAW §§ 265, 274 (McKinney Supp. 1983-1984); CONN. GEN. STAT. § 36-142(4)(e) (1983).

81. N.Y. INS. LAW, § 134 (McKinney Supp: 1983-1984). On background of this provision, see D. JOHNSON, *supra* note 14, at 78-79.

82. MASS. GEN. LAWS ANN., ch. 178, § 8 (West Supp. 1982-1983). N.Y. BANKING ACT, § 272 (McKinney Supp. 1983-1984); CONN. GEN. STAT § 36-142(4)(b) (1983).

83. Interview with Francis Pizzella, *supra* note 70.

substantially lower termination rates than regular savings accounts.[84]

Each of the three SBLI statutes employs identical language in providing banks "shall not employ solicitors of insurance, and shall not employ persons to make house to house collection of premiums . . . ."[85] These statutory sections, however, go on to provide that issuing banks may appoint business firms or other banks as agents to receive applications and premiums. For example, Massachusetts issuing banks long have paid agency banks and cooperative employers two percent of premiums received to help sell SBLI. The Massachusetts system also employs two salaried "instructors" to explain the advantages of SBLI to potential purchasers[86] and makes use of newspaper and mail advertisements. The combination of these selling techniques has not resulted in a substantial proportion of state life insurance sales being made by savings banks. In 1981, Massachusetts SBLI sales equaled 4.3% of all Massachusetts sales; New York SBLI sales equaled 2.4%; and Connecticut SBLI sales equaled 2.2%.[87] But the dramatically lower cost of SBLI sales[88] has made it possible to statutorily bar forfeiture of whole life policies after six months' payment have been made.[89]

The governance of the SBLI system is somewhat different in each state.

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84. J. Litner, *supra* note 14, at 199-205, further notes that SBLI premiums and bank accounts of SBLI policyholders are particularly desirable to banks because "savings bank life insurance policies have much longer average period of outstanding life than savings bank accounts." These same points were made by the New York Superintendent of Insurance in 1953, who said:

> A study made by one of the larger banks in the system indicates that 85% of life insurance applicants do not have savings accounts of the bank, but 44% of such applicants open accounts at the time they take out insurance or shortly thereafter. In addition, a further study covering a 5-year period indicates that there is only a 25% mortality in savings bank accounts originating from the life insurance department as compared to a 50% mortality in the regular savings accounts.

Superintendent *quoted in* D. Johnson, *supra* note 14, at 108. *See generally* D. Johnson, *supra* note 14, at 107-09. *See also Bank Insurance Grows*, 1022 Bus. Wk. 84, 87 (Apr. 2, 1949).

85. Mass. Gen. Laws Ann. ch. 178, § 13 (West Supp. 1982-1983); N.Y. Banking Law § 269 (McKinney Supp. 1983-1984); Conn. Gen. Stat. § 36-142(4)(c) (1983).

86. *See* Berman, *supra* note 14, at 30-31; C. Casady, *supra* note 36, at 30-31, 34-39.

87. *See supra* note 16.

88. As explained *supra*, in note 2, operating expenses of commercial life insurance firms (defined as commissions to agents and home and field office expenses) equalled 14.8% of all premium and investment income. The Massachusetts Savings Bank Life Insurance Statement of the Savings-Insurance Bank Life Insurance Departments (Oct. 31, 1981) reported total premium and investment income of $89,573,391.76 with operating expenses equal to $9,809,966 or 11% of that total. While the SBLI figure is superior, it is important to underline that life insurance firm expenses and profits on individual sales equalled 30.6% of total income. FTC, *supra* note 2, at 158. That figure probably provides a more relevant comparison with the SBLI 11% expenses ratio since only $2,836,002, or three percent, of 1981 SBLI total income was generated by group sales.

89. Mass. Gen. Laws Ann. ch. 178, § 11 (West Supp. 1982-1983); Conn. Gen. Stat. § 36-142(5)(b) (1983). New York's non-forfeiture provision has been repealed. Ch. 665, § 7, 1958 N.Y. Laws __.

Massachusetts has the most complicated system. The General Insurance Guaranty Fund is managed by seven trustees, all serving without salary, all of whom are trustees of savings banks, at least two of whom also are full-time bank employees.[90] The Act specifically forbids service on the Fund by an officer, employee or agent of any life insurance firm.[91] Trustees are appointed by the Governor for staggered seven-year terms.[92]

In addition to the General Insurance Guaranty Fund, Massachusetts also provides for a state division of savings bank life insurance which, effectively, is managed by the Fund.[93] The Fund trustees, with the approval of the Governor, appoint, and may remove, a deputy commissioner of the savings bank life insurance Division.[94] The deputy commissioner is the chief executive officer of the system.[95] By statute, he "shall administer the work of the division in accordance with [the trustee's] instructions . . . .[96] In fact, the relationship of the deputy commissioner to the Funds trustees is similar to that between a corporate chief executive officer and the board of directors. The deputy commissioner is the effective manager of the Massachusetts SBLI system. The Fund's trustees periodically meet with him and review his work.[97]

There are further statutory complexities to the Massachusetts SBLI system. The Fund's trustees appoint the state actuary and the state medical director.[98] By statute, the state actuary prepares standard policies, application forms, record books, premium rates, etc.[99] Similarly, by statute, the state medical director prescribes rules concerning the medical acceptability of applicants.[100] The Fund's trustees also manage the Savings Bank Life Insurance Council.[101] The Council provides savings banks operating insurance departments with advice, promotional service and centralized bookkeeping.[102] The Council is not a state agency and its expenses are apportioned among banks selling SBLI.[103] At least once every three years, the Massachusetts Commissioner of Insurance and the Commissioner of Banks examine the insurance departments of each bank issuing SBLI and also examine the General Insurance Guaranty Fund.[104] The Bank and Insurance Commission-

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90. MASS. GEN. LAWS ANN., ch. 26, § 10, ch. 178, § 14 (West 1958 & 1981).
91. *Id.* ch. 26, § 10 (1981).
92. *Id.*
93. *Id.* ch. 26, § 9.
94. *Id.* ch. 26, § 10.
95. *Id.* ch. 26, § 9.
96. *Id.* ch. 26, § 10.
97. *See id.*
98. *Id.*
99. *Id.* ch. 178, § 15 (West Supp. 1983-1984).
100. *Id.* ch. 178, § 16.
101. *Id.* ch. 178, § 32.
102. *Id.*
103. *Id.* ch. 178, § 32.
104. *Id.* ch. 178, § 26.

ers possess the equivalent to subpoena powers;[105] may enjoin a bank from further insurance operations if its condition is hazardous to the public or holders of policies;[106] and may request that a court appoint receivers to take possession of a bank's insurance department.[107] Finally, each issuing bank,[108] the General Insurance Guaranty Fund,[109] the Savings Bank Life Insurance Council,[110] and the Commissioners of Insurance and Banking[111] file annual reports.

The SBLI systems in New York and Connecticut are considerably simpler in organization. In New York, a private Savings Bank Life Insurance Fund, with seven trustees similar to those in the Massachusetts General Insurance Guaranty Fund is the sole managing body.[112] The New York SBLI Fund directly is responsible for the preparation of standard policies, applications, record books and premium rates and merely furnishes an underwriter and medical director for the participating banks.[113] As in Massachusetts, banks issuing SBLI are audited by the bank superintendent,[114] who has the equivalent of subpoena power[115] and the power to take possession of a bank's insurance department when it is in violation of the law or in an unsound or unsafe condition.[116] The Connecticut SBLI system is virtually identical. It is managed by a single private Savings Bank Life Insurance company[117] with audit functions performed by the state insurance commissioner and the state banking commissioner.[118]

While, obviously, there are formal differences between the governance of the Massachusetts, New York and Connecticut SBLI systems, these have not been particularly significant in the actual operation of the systems. Each system has succeeded in avoiding bank insurance department failures and in providing a lower cost form of insurance to state consumers virtually without cost to the state taxpayers.[119] Each system essentially is managed by: (1)

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105. *Id.*, ch. 178, § 27.
106. *Id.*, ch. 178, § 28.
107. *Id.*
108. *Id.*, ch. 178, § 29.
109. *Id.*, ch. 178, § 30.
110. *Id.*, ch. 178, § 33.
111. *Id.*, ch. 178, § 31.
112. N.Y. BANKING LAW § 270 (McKinney Supp. 1983-1984).
113. *Id.* § 271(e).
114. *Id.* § 277(a).
115. *Id.* § 277(b).
116. *Id.* § 279.
117. CONN. GEN. STAT. §§ 36-142(3), (10) (1983).
118. *Id.* § 36-142(7)(a) (1983). The insurance and bank commissioners possess the equivalent to subpoena powers, and may seek to enjoin operation of a bank insurance department and seek appointment by a court of receivers. *Id.* §§ 36-142(7)(b), (c).
119. During the period from 1907 to 1933, certain expenses of the Massachusetts SBLI system, in fact, were directly subsidized by the state. *See* ch. 561, § 17, 1907 MASS. ACTS _; ch. 188, 1927 Mass. Acts _; ch. 162, 1929 Mass. Acts _; C. CASADY, *supra* note 36, at 25; BERMAN,

a board of savings bank officials serving without salary; (2) a chief executive appointed by the board; (3) a private system of finance by which issuing banks apportion the costs of the managing board, the state actuary, the state medical director, common advertising and common bookkeeping expenses; and (4) a public system of audits by state bank and/or insurance officials; adequately empowered with subpoena and injunctive powers, and adequately notified of potential dangers by preparation of annual reports.

## IV. A Federal Depository Institutions Life Insurance System

A federal depository institutions life insurance system should be created employing the model of the state savings bank life insurance programs. The Appendix to this article includes a bill to create such a system. In several respects, this federal depository institutions life insurance (hereinafter, FDLI) system directly incorporates the principles of the state SBLI systems. The decision to become an FDLI issuer or to cease to be one should be a voluntary choice made by the depository institution.[120] Insurance department assets should be kept separate from the depository institution's other assets;[121] overhead expenses should be equitably apportioned between the insurance department and the other departments of the depository institution.[122] After six full months' premiums have been received, whole life policies should not be totally forfeited.[123] Solicitors and persons making house-to-house premium collections should be prohibited.[124] Policyholders will receive dividends, with depository institutions limited to a surplus of not more than ten percent of the net insurance reserve once a surplus account of $50,000 has been achieved, unless the General Insurance Guaranty Company grants permission to withhold more than ten percent of the net insurance reserve.[125]

There would need to be, however, modifications of the state SBLI systems to accomodate a FDLI system to the dual federal-state banking system and state regulated life insurance industry. First, all federal depository institutions (specifically, national banks, federal savings and loans and federal mutual savings banks) should be eligible to issue life insurance.[126] Given the

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*supra* note 14, at 71-84. The Massachusetts SBLI system also indirectly was subsidized until 1954 by the receipt from the state of rent-free office space. *See* D. Johnson, *supra* note 14, at 218.

120. *See* Proposed Federal Depository Institutions Life Insurance Act, *infra*, app. §§ 3, 16.

121. *Id.* § 5.

122. *Id.*

123. *Id.* § 7.

124. *Id.* § 8.

125. *Id.* § 14.

126. *Id.* § 2(a). As of the end of 1981, the numbers of federal and state depository institutions were as follows:

intent of the "Garn- St. Germain Depository Institutions Act of 1982"[127] to erode the historic distinctions between the services provided by banks on the one hand and savings and loans on the other, there is no clear federal policy in favor of differentiation. More importantly, life insurance may be sold by each type of depository institution with roughly equal cost savings and safety. There is no justification in inconveniencing the customers of any type of depository institution by requiring them to deal with a second institution to purchase life insurance. The issuance of life insurance, however, should be limited to federal depository institutions because the federal depository regulatory agencies exclusively possess the power to inspect only federally charted depository institutions.[128] State depository institutions,[129] along with other institutions, should be eligible to serve as agents in the sale and collection of premiums for federal depository institutions. But they should not be eligible to issue federal depository life insurance because the federal government does not possess exclusive, or necessarily even primary, examination responsibilities.

Second, persons in federal depository institutions issuing FDLI or in agency institutions which would sell FDLI should be required to pass the written life insurance agent's examination in the state where they would work.[130] This requirement will ensure that persons selling FDLI will possess the minimum level of competence required of life insurance agents in that state. It also would protect the non-depository institution life insurance agents from the "unfair" competition of persons not required to make a comparable investment in their training.

Third, federal depository institutions should not be subject to unjustified limitations on the amount of life insurance they may sell, the manner in which they may invest guaranty funds or the geographic location of customers. Like the life insurance firms against which they would compete, federal despository institutions should be allowed to sell life insurance policies in any size to customers living in any place inside or outside of the United

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| | Federal | State | Total |
|---|---|---|---|
| Commercial Banks | 4,454 | 10,428 | 14,882 |
| Mutual Savings Banks | 6 | 442 | 448 |
| Savings and Loans | 1,907 | 2,440 | 4,347 |

Federal Reserve Sys.,68th Annual Report of the Board of Governors of the Federal Reserve System 1981 246 (1982); Nat'l Ass'n of Mut. Sav. Banks 6 (1982); U.S. League of Sav. Inst., Savings and Loans Source Book 37 (1982).

127. Pub. L. No. 97-320, 96 Stat. 1469 (1982).

128. Federal depository regulatory agencies are defined in the Proposed Federal Depository Institutions Life Insurance Act, to include the Office of the Comptroller and the Federal Home Loan Board. Proposed Federal Depository Institutions Life Insurance Act, *infra* app. § 2(b). The Federal Reserve Board would not be a federal depository regulatory agency because it shares examination responsibilities of state chartered member institutions with state banking agencies.

129. *Id.* § 3.

130. *Id.* § 8.

States. Life insurance applications should be accepted or rejected purely on their business merits. In addition, each depository institution should be allowed to invest life insurance guaranty funds according to the law regulating life insurance firm guaranty funds in the state where the federal depository institution is located.[131]

As a general matter, federal depository institutions should be subject to regulation as nearly identical as is practicable in the sale of life insurance as are the life insurance firms against which they would compete. Competition in the marketplace, not among lobbyists, should determine which institutions are the most successful in selling life insurance. Nonetheless, there is one qualification to the theme of equal regulations that seems wise regarding the investment of premiums. Depository institutions invest deposits according to existing laws which typically are more restrictive than the laws regulating the investment of life insurance guaranty funds. Depository institutions investing FDLI premiums should be given the choice to comply with state laws regulating the investment of life insurance firm guaranty funds or alternatively to comply with federal law regulating the depository institution's investment of deposits.[132] This will permit smaller depository institutions to save the expense of compliance with two different bodies of law.

Fourth, FDLI sales should be coordinated by a General Insurance Guaranty Company.[133] The Company should be a private federally charted corporation rather than a federal agency. To fully disassociate it from partisan politics, its trustees should be elected by the federal depository institutions issuing life insurance. Each federal depository institution joining the FDLI system should be granted one share of stock empowering it to cast one vote. As in the Massachusetts SBLI system, there might be seven trustees serving staggered seven-year terms so that one trustee would be elected each year. All trustees would be required to be trustees, directors or full-time employees of federal depository institutions. None could be associated with a life insurance firm. None would be paid, but each could be reimbursed for the reasonable expenses of attending meetings.

The Company would directly appoint a chairman, a president, a chief actuary and a chief medical officer. Each appointment would be subject to year-to-year approval. The Company would directly approve standard application forms, standard policies and standard premium rates. It also would review the president's decisions concerning central advertising and central bookkeeping. The most important function of the General Insurance Guaranty Company would be to administer the general insurance guaranty fund, which would be run according to the same unification of mortality principles as are the state SBLI systems. The Company also would be allowed to buy national, regional or local television or radio time or newspaper or magazine

131. *Id.* § 6.
132. *Id.*
133. *Id.* § 9.

space to advertise FDLI.

Fifth, special provisions should regulate the start-up period of the FDLI system.[134] On the effective date of the FDLI Act, the president of the United States should name a temporary administrator who would possess all managerial powers for 180 days until the election of the initial board of trustees. The temporary administrator should have the power to hire a temporary chief actuary and temporary chief medical officer and to enter, on behalf of the General Insurance Guaranty Company, contracts with qualified federal depository institutions to sell FDLI. At no time would the federal government directly appropriate monies to the General Insurance Guaranty Company or the General Insurance Guaranty Fund. But during the first five years of the Company, the federal government should guarantee loans of up to five million dollars per year for expenses of the Company and up to twenty-five million dollars to serve as the initial capital of the General Insurance Guaranty Fund.[135] The inspiration for these start-up provisions is the desire to avoid a very slow start-up period like that experienced by the Massachusetts SBLI system.[136] It is further worth reiterating that if the Company succeeds, taxpayers will not be required to expend any money for its support.

Sixth, the monies collected in the General Insurance Guaranty Fund would be invested according to the restrictions applicable to the investment of deposits in national banking associations.[137]

Seventh, the insurance departments of federal depository institutions should be examined by the same federal depository regulatory agencies that examine their depository activities.[138] To minimize the cost of examination, federal depository regulatory agencies should examine the federal depository institutions' insurance departments at the same time these agencies examine the depository activities. The agencies would possess the same examination and subpoena powers in examining the insurance departments that they possess in examining depository activities.[139] The agencies further would

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134. *Id.* § 9(e).

135. *Id.* § 9(f).

136. Records of the Massachusetts SBLI system reveal that in 1908, the initial year of the system, only one bank agreed to issue SBLI. Through 1922, the fifteenth year of the system, only four banks had agreed to issue SBLI. *See* D. Johnson, *supra* note 14, at 23-24. A major reason for the initial hesitation of banks to join the Massachusetts SBLI was the relatively expensive $25,000 investment required. No similar investment is required in the FDLI proposed bill. Other problems included the slowness in appointing initial trustees and officials of the system. *See id.* at 23. This type of problem would be avoided by the start-up provisions of sections 9(e) and 9(f) of the proposed federal act.

137. Proposed Federal Depository Institutions Life Insurance Act, *infra*, app. § 13. For national bank investment powers, see 12 U.S.C. § 24 (Supp. 1983).

138. Proposed Federal Depository Institutions Life Insurance Act, *infra*, app. § 17(a).

139. *See id.* The federal depository regulatory agencies employ uniform examination principles developed by the Federal Financial Institutions Examination Council. 12 U.S.C. §§ 3301-

possess the power to seek federal district court appointment of a receiver in the event of the discovery of insolvency, business practices hazardous to the public or policyholders, or illegality.[140] Each insurance department also would be required to file an annual report with the General Insurance Guaranty Company.[141] The company itself would be required to file an annual report with Congress.[142]

One further point about the proposed federal statute should be noted. Secretary of the Treasury Donald Regan proposed in 1981 that bank holding companies be allowed to form subsidiaries to engage in the underwriting of municipal revenue bonds and mutual funds.[143] Secretary Regan justified this proposal as necessary to ensure that bank securities activities were subject to the same tax and regulatory treatment as independent securities firms.[144] After Secretary Regan's proposal was critized by bank representatives as "unnecessarily cumbersome and expensive", with the result that "it would limit competition for financial services",[145] Secretary Regan substantially amended his proposal. In February 1982 testimony he proposed that "commercial banks having assets of less than $100 million and unaffiliated with a holding company would be authorized to conduct new and existing securities activities through a subsidiary of the bank in lieu of forming a holding company."[146]

By a similar logic, it could be proposed that FDLI be sold by insurance subsidiaries of federal depository institutions. I have not done so in the attached bill because I believe that the segregation of life insurance assets and financial records would achieve the same purposes at a lower cost than the formation of separate subsidiaries. For small banks and savings and loans, the addition of even modest costs might discourage participation as issuers in the FDLI system.

## V. Advantages of a Federal Depository Institutions Life Insurance System

There are three primary advantages of the proposed FDLI system. First, the FDLI system will provide the most efficient means for deposi-

08 (1982).

140. Proposed Federal Depository Institutions Life Insurance Act, *infra*, app. § 18.

141. *Id.* § 19.

142. *Id.* § 20.

143. 1 *Financial Institutions Restructuring and Services Act of* 1981: *Hearings on* S. 1686, S. 1703, S. 1720 & S. 1721 *Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess. 4, 7 (1981).

144. *Id.*

145. *Id.* at 422-24, 1044-50 (statements of American Bankers Ass'n & Dealer Bank Ass'n).

146. *Securities Activities of Depository Institutions Hearings on S. 1720 Before the Senate Subcomm. on Securities of the Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 2d Sess. 6-8 (1982) [hereinafter cited as Securities Activities of Depository Institutions Hearing].

tory institutions to sell life insurance.

Currently, the legal barriers separating the banking, life insurance and securities industries are eroding. A few financial centers, led by Merrill Lynch, Sears and Roebuck and American Express, effectively compete in all three primary financial industries today. Each of these firms not only sells life insurance and securities services, but also directly competes with banks through money market accounts and loan services. None of them is subject to dollar limitations in any of their sales activities.[147]

At the same time, a number of insurance firms have begun to directly operate in the bank industry through the sale of money market funds. Some sense of how large the insurance industry's penetration of the banking industry has been is suggested by the following data. In 1981, approximately 4.1 trillion dollars in life insurance was in force in the United States.[148] Of this total, 1.9 trillion dollars or forty-seven percent, was sold by the ten largest firms.[149] An examination of the 1981 annual reports of these firms and William Donoghue's *Complete Money Market Guide*, reveals that eight of these ten firms are currently engaged in banking through the sale of money market accounts, either directly or through an affiliated firm.[150] Most recently, in April 1983, Prudential Insurance Company announced it would acquire a small commercial bank in Georgia.[151]

National banks and federal savings and loans, on the other hand, generally are prohibited from selling life insurance.[152] The unfairness of this pat-

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147. *The Depository Institutions Amendments of 1982: Hearings on S. 2879, H.R. 4603, & H.R. 6267 Before the House Subcomm. on Financial Institutions, Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 97th Cong., 2d Sess. 478-88 (1982) [hereinafter cited as *Depository Institutions Amendments of 1982 Hearings*]; *Competition and Conditions in the Financial System: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess. 241-44, 1775 (1981); [hereinafter cited as *Competition and Conditions Hearings*] *Financial Institutions in a Revolutionary Era: Hearings Before the House Comm. on Banking, Finance and Urban Affairs*, 97th Cong., 1st Sess. 11-31 (1981). A chart diagraming "Who Does What" appears in 2 *Financial Institutions Restructuring and Services Act of* 1981: *Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess. 564 (1981) [hereinafter cited as *Financial Institutions Restructuring and Services Act of 1981 Hearings*].

148. American Council of Life Ins. *supra* note 1, at 5.

149. National Underwriter, Ranking of 820 Life Companies (1982).

150. Prudential, 1981 Annual Report 8 (1982); Equitable, Annual Report 1981 4, 12 (1982); John Hancock Mutual Life Insurance Company, 1981 Annual Report 10 (1982); Transamerica Corporations, 1981 Annual Report 26 (1982) (Transamerica is the parent corporation of two of the ten largest life insurers, Transamerica Occidential Life Group and Transamerica Assurance Company); The Travelers, 1981 Annual Report 12 (1982); Connecticut General, 1981 Annual Report 26 (1982). For information concerning Aetna Life & Casualty and Connecticut General, see W. Donoghue, Complete Money Market Guide 210 (1980).

151. *See* N.Y. Times, Apr. 9, 1983, at __.

152. National banks may not sell life insurance except as agents in places with a population of 5,000 or less. 12 U.S.C. §§ 24, 92 (Supp. 1983). *See also* Saxon v. Georgia Ass'n of Indep. Ins. Agents, 399 F.2d 1010 (5th Cir. 1968).

tern of competition between federal depository institutions and life insurers is obvious. As Senator Garn asked an insurance representative in 1981, "You're saying keep banks out of the insurance industry. Why should large insurance companies be getting into the securities business or the banking-type functions through indirect means?"[153]

It is preferable to fully remove the legal barriers preventing inter-financial industry competition rather than reestablish them. Most private sectors of the economy are subject to the federal antitrust laws which encourage interindustry competition. The economic reasons for this encouragement were aptly summarized by Justice Black when he wrote in *Northern Pacific Railway Co. v. United States*, "the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."[154]

The financial industries have not been fully subject to interindustry competition, primarily because of concerns about the soundness of financial firms and the avoidance of undue concentration of financial assets. In Part VI, these and other likely objections to an FDLI system will be analyzed.

In this part, however, it is assumed that there are no persuasive objections to the sale of life insurance by depository institutions. If this assumption is justified, the sale of life insurance by depository institutions through an FDLI system is preferable to other methods by which depository institutions could sell life insurance. Congress in recent years has not focused on the distinction between depository institutions owning life insurance firms or acting as agents of life insurance firms in the sale of life insurance, on the

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Bank holding companies may provide credit life insurance; sell life insurance in a place with a population not exceeding five thousand or which the bank holding company has demonstrated has inadequate insurance agency facilities; continue insurance activities approved before May 1, 1982; supervise retail agents who sell fidelity insurance and property and casualty insurance on real and personal property used by the holding company or sell group life insurance for the holding company's employees; or, if the bank holding company has total assets of $50,000,000 or less, engage in any insurance agency activity. 12 U.S.C. § 1843(c)(8) (1982). *See also* S. Rep. No. 536, 97th Cong., 2d Sess. 36-42 (1982); Schweltzer & Holbrook, *Insurance Activities of Banks and Bank Holding Companies: A Survey of Current Issues and Regulations*, 29 Drake L. Rev. 743 (1980); Frey, *Bank Holding Companies and Non-bank Activities*, 1978 Ann. Surv. of Am. Law 209. See *Tie-ins of the Sale of Insurance by Banks and Bank Holding Companies, supra* note 14, at 32, concerning the life insurance activities of state banks.

Federal savings and loans may not sell life insurance. 12 U.S.C. § 1464(c) (Supp. 1983). Federal savings and loans holding companies, however, may conduct an insurance agency or an escrow business. *Id.* 1730a(c)(2).

The National Credit Union Administration has interpreted its 12 U.S.C. § 1757(15) (Supp. 1983), incidential powers clause, to permit the sale of life insurance. *See* Federal Credit Union Insurance & Group Purchasing Activities, 12 C.F.R. § 721 (1983).

153. *Competition and Conditions Hearings, supra* note 147, at 339 (statement of Garn).

154. 356 U.S. 1, 4-5 (1958).

one hand, and those participating in an FDLI-type system, on the other hand.[155] The distinction is fundamental. If depository institutions own life insurance firms or act as agents of life insurance firms, the depository institutions inevitably will sell individual life insurance policies at a higher cost to consumers then they would through an FDLI system.

This is true for two reasons. First, an FDLI system always will achieve cost efficiencies by employing one institution to perform both depository and life insurance functions. In contrast, if depository institutions were empowered to own life insurance businesses, nothing would prevent the depository institutions from purchasing or establishing a life insurance firm that physically would be located elsewhere. Under this circumstance, consumers would not benefit from the lower overhead costs that would result from the integration of the depository and life insurance businesses. Instead, consumers' costs might include contribution to the overhead both of a depository institution and a separate life insurance firm.

For many depository institutions, direct ownership of a life insurance business would be unrealistically expensive. These depository institutions could enter the life insurance business only by acting as agents of life insurance firms. Again, however, consumers of life insurance from the depository institution would be forced to pay the costs both of a depository institution and of a separate life insurance firm. Only an FDLI system can guarantee the most effective integration of depository and life insurance operations.

Moreover, only an FDLI system can guarantee the elimination of agents' commissions. Absent a law explicitly prohibiting the payment of agents' commissions, depository institutions owning life insurance businesses would be permitted to pay life insurance agents sales commissions. Similarly, depository institutions would be permitted to receive sales commissions when acting as agents of life insurance firms. Given the imperfection of the life insurance market,[156] there is no basis for assuming that depository institutions inevitably would find it in their best interest to eliminate or minimize sales costs and to compete on the basis of price. More likely, depository institutions, like life insurance firms, usually would rely on commissioned agents. The higher costs resulting from sales commissions would be justified if the agents stimulated sufficient sales to cause the depository institutions to earn higher life insurance profits than they would in a system without agents and with lower sales.

The FDLI system again presents a sharp contrast. The system, in effect, forces depository institutions to compete on the basis of lower policyholder costs. Not only will such competition directly reduce the costs of FDLI, it

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155. In 1978, a report of the House Subcommittee on Oversight and Investigations urged a study of savings bank life insurance. *See Life Insurance Marketing and Cost Disclosure Hearings, supra* note 6, at 53-54.

156. *See supra* text accompanying notes 29-33.

will also put pressure on competitive life insurance firms to decrease their costs.

The second advantage of an FDLI system would be substantially reduced costs for policyholders who purchase individual life insurance policies. The amount of cost savings consumers will enjoy purchasing individual FDLI policies can be estimated from the experience of state banks that currently sell savings bank life insurance. For example, in January 1982, *Best's Review*, an insurance industry trade journal, compared the actual results of the first ten years of $25,000 whole life policies sold in 1971 to thirty-five year old males for some seventy life insurers.[157] Four indices were calculated: (1) average yearly payment; (2) average yearly difference; (3) interest-adjusted payment index; and (4) interest-adjusted surrender cost index.[158] The comparison indicated that the Massachusetts SBLI was the least expensive, employing each of the four indices.[159] Of the four indices, the most useful for calculating the cost of a whole life policy is the interest-adjusted surrender cost index. Unlike an average payment index, which merely measures the average annual premium payment, a surrender cost index attempts to accurately convey the net cost of life insurance by subtracting from the annual premium payments the dividends that annually reimburse part of the premium cost and the savings element of whole life insurance which would be "surrendered" to the policyholder if the policy was terminated after a specific period of time. The surrender cost index also recognizes the time-value of money by calculating the interest that would be earned on premiums and dividend payments. In the *Best's* calculations, interest was calculated at five percent, a figure roughly equal to the amount paid in most bank passbook accounts during this period.[160] Finally, the interest-adjusted net cost of whole life was reduced to an annual cost per thousand dollars of insurance.[161]

Employing the interest-adjusted surrender cost index, *Best's* reported that Massachusetts SBLI had an annual interest-adjusted surrender cost of $2.72 per thousand dollars of insurance.[162] This cost was twenty-five percent less than the least expensive whole life policy provided by any private life insurance firm covered in the survey.[163] Other survey results included:

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157. Massaro, *Building the Everything Box*, in BEST'S REVIEW, LIFE/HEALTH EDITION 50-57 (Jan. 1982).

158. *Id.*

159. *Id.*

160. *Id.*

161. *See Note, Life Insurance and the Consumer: At What Price Disclosure*, 26 DRAKE L. REV. 857, 861-63 (1977).

162. Massaro, *supra* note 157, at 50-57.

163. *Id.* These costs will vary depending on what interest rate is used to compute them. BEST'S REVIEW, LIFE/HEALTH EDITION 76-83 (Dec. 1981) published similar results for 70 life insurers issuing $10,000 whole life policies to a 35 year old male over the twenty year period, 1961 to 1981.

FIVE LEAST EXPENSIVE POLICIES
INTEREST-ADJUSTED SURRENDER COST INDEX
Cost Per Thousand Dollars of Life Insurance[164]

| Firm | Cost | Cost of Massachusetts SBLI Expressed as a Percentage of Competitor's Price |
|---|---|---|
| Massachusetts SBLI | $2.72 | -- |
| New York SBLI | 3.83 | 71% |
| Equitable Life, Iowa | 3.85 | 71% |
| Union Mutual | 4.27 | 64% |
| Presbyterian Min. | 4.41 | 62% |

MASSACHUSETTS SBLI POLICIES COMPARED TO THE
POLICIES OF THE FIVE LARGEST LIFE INSURERS
INTEREST-ADJUSTED SURRENDER COST INDEX
Cost per Thousand Dollars of Life Insurance[165]

| Firm | Cost | Cost of Massachusetts SBLI Expressed as a Percentage of Competitor's Price |
|---|---|---|
| Massachusetts SBLI | $2.72 | -- |
| Prudential | 6.87 | 43% |
| Metropolitan | 7.71 | 35% |
| Equitable | 5.17 | 53% |
| Aetna | 10.33 | 26% |
| John Hancock | 5.41 | 50% |

The results of the *Best's Review* survey suggest that a $25,000 whole life Massachusetts SBLI policy costs between twenty six and fifty three percent of the costs of comparable policies of the five leading life insurers. These data suggest that FDLI could be sold by federal depository institutions at substantially less than the cost of comparable policies currently sold by private life insurance firms through agents.

This result is consistent with other published data concerning the costs of selling individual life insurance policies. The 1979 Federal Trade Commission staff study, employing 1977 data, estimated that private life insurance firms expenses and profits averaged 30.6% of the premium and investment income from individual life insurance sales.[166] In contrast, the expenses of the Massachusetts SBLI program in 1981 equalled eleven percent of premium and investment income. About three percent of 1981 Massachusetts SBLI sales were for group life insurance. If all the Massachusetts

164. Massaro, *supra* note 157, at 50-57.

165. *Id.*

166. FTC, *supra* note 2, at 158. *See also Life Insurance Industry Hearings*, *supra* note 6, at 10, 18, where Ralph Nader testified that in 1971 expenses averaged 27% of premium income for individual policy sales at eight leading companies. By contrast, expenses equaled only 5.9% of group premiums at the same firms in 1971. *Id.*

SBLI expenses were associated with the ninety-seven percent of the total sales made to individuals, expenses still averaged only 11.3% of all premium and investment income.[167]

Finally, it is worth noting that the cost of FDLI may be somewhat less than the cost of Massachusetts SBLI. In 1981, the Massachusetts SBLI system could not sell more than $53,000 worth of life insurance to any single policyholder. Because there are economies of scale in the sale of individual life insurance policies, it is probable than an FDLI system operating without dollar limitations would be able to sell life insurance at a lower average cost.[168]

A third advantage of an FDLI system would be lower forfeiture costs for purchasers of whole life insurance. Annually only about one-third as many policies issued by the Massachusetts SBLI system lapse as do life insurance policies generally. For example, in 1981, the voluntary termination rate for all life insurance policies was 8.9%; the lapse rate for Massachusetts

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167. *See supra* note 88. On bank operating expenses in selling life insurance, see also *Tie-Ins of the Sale of Insurance By Banks and Bank Holding Companies, supra* note 14, at 271-72 (Statement of William Reilly, Senior Vice President, Crocker National Bank).

168. The extent of the decrease in costs likely to occur in an FDLI system operating without dollar limitation is suggested by the data from the 1980 Best's Review policy cost comparisons. In that year, the interest adjusted payments index per $1,000 for the top five firms in the $25,000 whole life age 35 male category can be compared with the interest adjusted payments index per $1,000 for these firms in the $100,000 whole life age 35 male category.

| | *Firm* | *Interest adjusted payment index 10th year—Per whole life $25,000 Age 35 male per $1,000* | *Interest adjusted payment index 10th year—Per whole life $100,00 Age 35 male per $1,000* | *Percentage Decrease* |
|---|---|---|---|---|
| 1. | Mass SBLI | 11.63 | -- | |
| 2. | USAA Life, Texas | 12.04 | 11.44 | 5% |
| 3. | Phoenix Mutual Life | 12.81 | 12.21 | 4.7% |
| 4. | Manufacturers Life | 13.02 | 11.73 | 9.9% |
| 5. | Shenandoah Life | 13.12 | 12.22 | 6.9% |

Best's Review, Life/Health Edition 48-51 (Nov. 1980).

The Teachers Insurance and Annuity Association - College Retirement Equities Fund (TIAA - CREF) reports considerably larger volume discounts. In April 1983, TIAA-CREF informed the author, a 33 year-old male, of the following premium costs per thousand dollars of insurance on two term insurance policies:

SBLI policies was 3.5%.[169]

A high lapse rate is most significant for recent purchasers of whole life insurance. Between 1973 and 1977, the Federal Trade Commission studied whole life policies and reported that it was common for whole life policyholders to lose their entire cash value if the policy lapsed within one year and experience a negative rate of return if lapse occurred during the first five years.[170]

According to the American Council of Life Insurance, the lapse rate in 1981 for individual policies held less than two years was 23.5%.[171] The lapse rate for individual companies varies considerably. For the year 1971, the Senate Subcommittee on Antitrust and Monopoly published thirteen month lapse rates[172] for 148 private life insurance firms. Senator Hart subsequently reported that for sixty-four of the 148 firms surveyed, the thirteen-month lapse rates exceeded twenty-five percent; fifteen of the 148 firms had rates between forty and fifty percent.[173]

These data suggest that on average only about one-third as many purchasers of Massachusetts SBLI allow their policies to lapse. Purchasers of policies from some private life insurers have dramatically higher lapse rates than the average firm. The obvious reason for the dramatically higher lapse rates in some life insurance firms is high-pressure salesmanship. Consumers

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*5-Year Renewable Term Policy:*

| *Policy Amount* | *First-Year Premium* | *Premium Per $1,000* | *Percentage Decrease* |
|---|---|---|---|
| $50,000 | $116.25 | $2.33 | — |
| 100,000 | $155.00 | $1.55 | 33% |
| 150,000 | $232.50 | $1.55 | 33% |
| 200,000 | $310.00 | $1.55 | 33% |
| 250,000 | $348.75 | $1.40 | 40% |

*30-Year Decreasing Term Policy:*

| *Policy Amount* | *First-Year Premium* | *Premium Per $1,000* | *Percentage Decrease* |
|---|---|---|---|
| $50,000 | $138.75 | $2.78 | — |
| 100,000 | $185.00 | $1.85 | 33% |
| 150,000 | $277.50 | $1.85 | 33% |
| 200,000 | $370.00 | $1.85 | 33% |
| 250,000 | $416.25 | $1.67 | 40% |

Letter from TIAA-CREF to the author (Apr. 18, 1983).

169. *Compare* American Council of Life Ins., *supra* note 1, at 54 *with* Best's Insurance Reports—Life/Health 1287 (1982).

170. FTC, *supra* note 2, at 193-96. In many states a cash value is required only after premiums have been paid for three years. S.S. Huebner & K. Black, *supra* note 3, at 191-92.

171. American Council of Life Ins., *supra* note 1, at 54.

172. 4 *The Life Insurance Industry: Hearings Before the Senate Subcom. on Antitrust and Monopoly of the Senate Comm. on Judiciary*, 93rd Cong., 2d Sess. 2905-90 (1974).

173. 121 Cong. Rec. 21,476 (1975). *See also* 1 *The Life Insurance Industry Hearings*, *supra* note 6, at 9.

are persuaded by agents to purchase policies that after a relatively short period of time they conclude are inappropriate for them.

This type of high pressure salesmanship is unlikely to occur in the sale of FDLI. As with the sale of SBLI, federal depository personnel will not receive a commission from any sale. They will have no financial incentive to persuade a reluctant consumer to buy any particular policy. This increases the likelihood that personnel at federal depository institutions can provide the type of disinterested advice expected from a fiduciary. In contrast, the private life insurance agent has a financial incentive to sell regardless of the consumer's best interest. The higher lapse rates for private life insurers than for SBLI makes it obvious that this is a temptation to which the commissioned life insurance agent too often yield.

## VI. Objections to a Federal Depository Institutions Life Insurance System

The most serious objection that might be made to the sale of life insurance by federal depository institutions is that the sale would endanger the solvency of depository institutions. This type of objection persuaded Congress in 1933 to enact the Glass-Steagall Act[174] which was intended to prohibit national banks from engaging in most security underwriting activities.[175] Enactment occurred after nearly 600 national and state banks or their affiliates had entered the securities business[176] capturing in 1930 some forty-five percent of total new issue originations.[177] This commercial bank penetration of the investment banking industry occurred nearly simultaneously with an unprecedented number of bank insolvencies. In all, some 8,493 banks experienced insolvency between June 30, 1929 and June 30, 1933.[178]

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174. Pub. L. No. 66, 48 Stat. 162 (1933). Concerning regulation of the soundness of banks and bank holding companies, see especially, Black, Miller & Posner, *An Approach to the Regulation of Bank Holding Companies*, 51 J. Bus. 379 (1978); Clark, *The Soundness of Financial Intermediaries*, 86 Yale L.J. 1 (1976); and Clark, *The Regulation of Financial Holding Companies*, 92 Harv. L. Rev. 789 (1979).

175. *But see* Board of Governors of the Fed. Reserve Sys. v. Investment Co. Inst., 450 U.S. 46, 78 (1981) (holding that affiliates of banks may be authorized to engage in certain activities that are prohibited to banks themselves). For example, *Board of Governors* noted that while section 21 of the Glass-Steagall Act entirely prohibits a firm from engaging in commercial banking and in the underwriting business. *See* Investment Co. Inst. v. Camp, 401 U.S. 617 (1971), section 20 of that Act does not prohibit bank affiliation with a securities firm unless that firm is "engaged principally" in activities such as underwriting. *Id.* at 65-78.

176. See data assembled by Edwards, *Banks and Securities Activities: Legal and Economic Perspectives on the Glass-Steagall Act, printed in* 2 Competition and Conditions Hearings, *supra* note 147, at 1774, 1776.

177. *Financial Institutions Restructuring and Services Act of 1981 Hearings*, *supra* note 147, at 955, 960-61 (statement of Craigie).

178. Edwards & Scott, *Regulating the Solvency of Depository Institutions: A Perspective for Deregulation*, in Issues in Financial Regulation 65, 80 (F. Edwards ed. 1979). A similar calculation was made by the Senate Banking and Currency Committee in May 1933. *See* S.

Congress associated the securities activities of the commercial banks with this wave of insolvencies. Specifically, the commercial banks were criticized for the "excessive" lending of money to securities purchasers or brokers, who, in turn, lent to securities purchasers.[179] The commercial banks also were criticized for the creation of securities affiliates which engaged in several activities that it was argued increased the risk of the commercial bank. These activities included underwriting securities,[180] purchase of securities by bank affiliates,[181] and maintaining a market for the banks' stock.[182]

Other more subtle hazards also were noted. For example, it was feared that if a securities affiliate bearing the same name as a commercial bank did poorly, public confidence in the bank might be impaired. This might inspire commercial banks to make unsound loans to their securities affiliates, or to companies in whose securities the securities affiliates had invested.[183] Or, bank depositors who suffered losses in securities investments made in reliance on the bank might withdraw both their deposits and securities accounts during periods of security market deflation.[184] Similar claims were made in the early 1970s regarding bank and bank holding company sponsored real estate investment trusts.[185]

Nonetheless, there seems little likelihood that participation in a federal depository institutions life insurance system would endanger the soundness of federal depository institutions. This primarily is the consequence of the design of the FDLI system. By backing the life insurance business of all federal depository institutions with a single general insurance guaranty fund, the insurance business of each federal depository institution would be reinsured. If a federal depository institution's life insurance business suffers an unexpectedly high number of deaths in any year, it will be subsidized by other participating federal depository institutions experiencing a less than expected death rate, and, if necessary, by the reserves of the General Insur-

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Rep. No. 77, 73rd Cong., 1st Sess. 5-6 (1933). Also see the discussion of the legislative history of the Glass-Steagall Act, in *Investment Co. Inst. v. Camp.*, 401 U.S. at 629-34.

179. S. Rep. No. 77, 73rd Cong., 1st Sess. at 9; Investment Co. Inst. v. Camp., 401 U.S. at 632.

180. S. Rep. No. 77, 73rd Cong., 1st Sess. at 10. The National City Company was a much investigated example of a bank affiliate that underwrote highly risky securities in the period immediately preceding 1933. *See* J. Seligman, The Transformation of Wall Street 27-28 (1982). *See also* Edwards, *supra* note 176, at 1776-77.

181. S. Rep. No. 77, 73rd Cong., 1st Sess. at 10. A more recent example of this type of risk involved the Eatontown National Bank. *See* 1 *Financial Institutions Restructuring and Services Act of 1981 Hearings, supra* note 147, at 728 (written statement of the Investment Company Institute).

182. S. Rep. No. 77, 73rd Cong., 1st Sess. at 10; J. Seligman, *supra* note 180, at 28-29.

183. *See* Investment Co. Inst. v. Camp, 401 U.S. at 630-31.

184. *Id.* at 631-32, 634.

185. *See* 1 *Financial Institutions Restructuring and Services Act of* 1981 *Hearings supra* note 147, at 260, 310-13, 319-24 (written statement of the Investment Company Institute). *See generally* Clark, *The Regulation of Financial Holding Companies, supra* note 174, at 828-31.

ance Guaranty Company.[186] The effectiveness of reinsurance by a general insurance guaranty fund in avoiding savings bank insolvencies is demonstrated by the fact that no savings bank participating in a state SBLI system ever has failed, nor has failed to make prompt payment of a just and due claim.[187] Indeed, the fact that a portion of each savings bank's expenses is paid by an SBLI system[188] undoubtedly reduces the risk of failure for these banks, as it also would in the proposed FDLI system.[189]

The unlikelihood of FDLI sales endangering the solvency of federal depository institutions also is suggested by the limited federal legislature history on the subject. Most recently, four insurance organizations acknowledged in written testimony to the Senate Banking Committee that "it is unlikely that any bank holding company has gotten into trouble as a result of an insurance affiliate."[190] The historic prohibitions of national bank life insurance sales have been explained in terms of preventing "unfair competition" with insurance agents,[191] of preventing banks from tying sales of life insurance to loans,[192] or because of the lobbying clout of the life insurance industry,[193] not because of concerns about bank solvency.

It further is worth noting, that one traditional justification for depository institutions soundness regulation has been to prevent "bank runs".[194] For the past half-century, bank runs have been virtually eliminated by the widespread use of deposit insurance. In recent years independent commentators generally have agreed that it is preferable to allow unlimited depository insurance to ensure depository institution soundness rather than employ activity limitations.[195]

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186. *See* Proposed Federal Depository Institutions Life Insurance Act, *infra*, app. § 9(b).

187. D. Johnson, *supra* note 14, at 221; Letter from Francis Pizzella, President, Massachusetts Savings Bank Life Insurance Council to the author (June 21, 1983); Letter from Charles Katabian, President, The Savings Bank Life Insurance Company (Connecticut) to the author (June 23, 1983).

188. *See* statutes cited *supra* note 82. See also Clark, *The Regulation of Financial Holding Companies*, *supra* note 174 at 819-22, for other reasons why the conglomeration of business under one management may increase efficiency. See also 53 Cong. Rec. 11,001 (1916) for early recognition of the likelihood that life insurance sales would reduce the risk of bank failure.

189. *See* Federal Depository Institutions Life Insurance Act, *infra* app. § 5.

190. 3 *Financial Institutions Restructuring and Services Act of 1981 Hearings*, *supra* note 147, at 93, 99-100 (answers of the Independent Insurance Agents of America, Inc., Professional Insurance Agents, National Association of Life Underwriters, and National Association of Casualty and Surety Agents).

191. *See* Saxon v. Georgia Ass'n of Indep. Ins. Agents, Inc., 399 F.2d 1010, 1018 (5th Cir. 1968) (text and citations).

192. *See infra* text accompanying notes 201-07.

193. *See, e.g.*, 103 Cong. Rec. 3476 (1957) (statement of Sen. Robertson).

194. *See, e.g.*, Edwards & Scott, *supra* note 178, at 78-81; Clark, *The Soundness of Financial Intermediaries*, *supra* note 174, at 23-25.

195. *See* Edwards & Scott, *supra* note 178, at 87-88, 98-105; Clark, *The Soundness of Financial Intermediaries*, *supra* note 174, at 86-101; Black, Miller & Posner, *supra* note 174, at

Another major concern about permitting depository institutions to enter new fields has been the fear that concentration levels would be raised. This concern has been articulated in a variety of ways. One articulation focuses on the dangers to the commercial credit market that might occur if the largest banks and largest insurance firms were allowed to merge.[196] A second concern is that permission to enter new fields technically available to all depository institutions, in fact, would be employed only by a few leading banks and bank holding companies.[197] A third concern, derivative of the second, is that concentration levels within local depository markets will increase because the greater efficiency of large depository institutions competing in new fields ultimately will lead to the bankruptcy or merger of smaller depository institutions.[198]

However warranted these concerns might be in response to other possible changes in the regulation of financial institutions, they are not a persuasive objection to the proposed FDLI system. The proposed FDLI system does not authorize mergers between federal depository institutions and life insurers. Such mergers implicitly would be prohibited under the proposed act. By backing the insurance underwriting activities of federal depository institutions with a single general insurance guaranty fund, relatively small federal depository institutions would be able to compete in the life insurance industry. Thus, there is little likelihood that the FDLI system only

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390-91, 406-07; Edwards, *supra* note 176, at 1779. Among other reasons for greater reliance on depository insurance has been the recognition that most recent bank and life insurance firm failures have been the result of managerial dishonesty or improper loans. *See* Clark, *The Regulation of Financial Holding Companies*, *supra* note 174, at 838 & n.199 (text and citations); Edwards & Scott, *supra* note 178, at 76 & n.18; Schotland, *Conflicts of Interest Within the Financial Firm: Regulatory Implications*, in ISSUES IN FINANCIAL REGULATION 123, 140 (F. Edwards ed. 1979).

196. *See, e.g.*, H. REP. No. 387, 91st Cong., 1st Sess. 23 (1969). Those espousing this concern are unimpressed that studies to date have not demonstrated a correlation between interest rate levels and concentration levels in bank markets. *See* Clark, *The Soundness of Financial Intermediaries, supra* note 174, at 40, n.116. Nor are they impressed by other studies which indicate that the expansion of bank holding companies has not led to an increase in their control over this nation's aggregate financial resources or significantly affected commercial banking in any specific geographic market. *See* Clark, *The Regulation of Financial Holding Companies, supra* note 174, at 836, n.196. Instead, those concerned about mergers between leading banks and leading insurance firms emphasize the general inability of federal antitrust laws to proscribe conglomerate mergers. *See, e.g.*, Verkuil, *Perspectives on Reform of Financial Institutions*, 83 YALE L.J. 1349, 1365, n.101 (1974).

197. *See* 1 *Financial Institutions Restructuring and Services Act of* 1981 *Hearings, supra* note 147, at 638, 678-80 (written statement of the Investment Company Institute). Also see a paper prepared by Girton, with support provided by the Investment Company Institute, *Concentration of Financial Power reprinted in id.* at 809-38.

198. There is a sizeable literature on economics of scale in the commercial banking industry and the relationship of scale economics to possible future regulatory changes. For example, see the literature surveys in Heggestad, *Market Structure, Competition, and Performance in Financial Industries: A Survey of Banking Studies*, in ISSUES IN FINANCIAL REGULATION 449-90 (F. Edwards ed. 1979),, and Verkuil, *supra* note 196, at 1361-66.

would be employed by the largest federal depository institutions. This is illustrated by experience in the state SBLI systems. In Massachusetts, for example, currently sixty-two (forty-one percent) of the 151 mutual savings banks underwrite SBLI, and seventy-seven (fifty-one percent) act as agents.[199] Only twelve (eight percent) of these banks do not participate in the system at all.[200]

To date, the greatest Congressional concerns about bank entry into the life insurance field have related to the tying of credit life insurance to the provision of credit.[201] The argument frequently has been made that banks would refuse to extend loans unless the borrower purchased their credit life insurance. Congress, in response, enacted statutory provisions in 1970 prohibiting banks from making loans on the condition that the borrower simultaneously obtain credit life insurance or other services from the banks.[202] Congress, however, reaffirmed in October 1982 that bank holding companies could continue to provide credit life insurance subject to this tie-in provision.[203]

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199. Interview with Leo MacNeil, Vice President of Massachusetts Savings Bank Life Insurance Council, in Boston, Massachusetts (May 31, 1983).

Indeed, on occasions, the pro-competitive advantages of bank participation in the life insurance industry have been recognized. Thus, in 1916, national banks in towns with populations of 5,000 or less were empowered to act as agents in the sale of fire, life or other insurance by 39 *Stat.* 752, 753-754 (1916), after the Comptroller argued that the sale of life insurance would reduce the risk of competing in the banking business in small towns while increasing the number of available life insurance agents. 53 CONG. REC. 11,001 (1916). Similarly, before the Bank Holding Company Act Amendments of 1970, committees in both houses of Congress published reports acknowledging the efficiencies that could be achieved by permitting banks to engage in "functionally related" or "congeneric" activities. H. REP. No. 387, 91st Cong., 1st Sess., 14-15 (1969); S. REP. No. 1084, 91st Cong., 2d Sess. 13-15 (1970).

200. Interview with Leo MacNeil, supra note 199.

201. *See, e.g.*, 77 CONG. REC. 4048 (1933) (statement of Rep. Bulwinkle); S. REP. No. 1084, 91st Cong., 2d Sess. 3 (1970). Similarly, the life insurance industry has emphasized the tie-in argument above others in opposing bank sale of life insurance. *See Depository Institutions Amendments of 1982 Hearings, supra* note 147, at 348-68, 580-82 (statement of Robert Reynolds, President, Independent Insurance Agents of America, Inc. & statement by the National Association of Professional Insurance Agents); *Securities Activities of Depository Institutions Hearings, supra* note 146, at 427, 433-34 (1982) (statement of the American Council of Life Insurance). *See generally Tie-Ins of the Sale of Insurance by Banks and Bank Holding Companies, supra* note 14; Edwards, *Economies of "Tying Arrangements: Some Proposed Guidelines For Bank Holding Company Regulation*, 3 ANTITRUST L. & ECON. REV. 87 (1973); Schweltzer & Holbrook, *supra* note 152, at 752-55; Alabama Ass'n of Ins. Agents v. Bd. of Governors of Fed. Reserve Sys., 533 F.2d 224, 249-51 (5th Cir. 1976); Clark, *The Regulation of Financial Holding Companies, supra* note 174, at 827-28. Analogous "tie-in" arguments have been made by the Investment Company Institute in opposition to bank management of retirement plan assets, *see Securities Activities of Depository Institutions, Hearings, supra* note 146, at 260, 316-19; and by the Securities Industry Association in opposition to bank underwriting of municipal bonds, *see* 1 *Financial Institutions Restructuring and Services Act of 1981 Hearings, supra* note 147, at 955, 979-82.

202. 12 U.S.C. §§ 1971-78 (Supp. 1983). *See also* 12 C.F.R. § 225.4(c) (1982).

203. Pub. L. No. 97-320, 96 *Stat.* 1469, 1536-38 (1982).

The proposed FDLI statute entirely side-steps the debate concerning the typing of credit life insurance to depository institution loan activity. The statute provides, "No federal depository institution . . . may make nor issue any life insurance policy by virtue of the powers granted in this Act to assure repayment of the outstanding balance due on an extension of credit by that institution or any affiliated institution in the event of death, disability or involuntary unemployment of the debtor."[204] This language is meant to totally prohibit the use of the FDLI statute to sell credit life insurance.[205]

A second type of tying arrangement also is possible. A depository institution might extend credit (or other products or services) on the condition that the borrower purchase FDLI. In its most extreme form, a federal depository institution might refuse to make a loan to a corporation unless the corporation made a group FDLI purchase. This is extremely unlikely to occur because few, if any, federal depository institutions possess the market power to impose such a requirement.[206] Nonetheless, to guard against even this unlikely event, the proposed statute prohibits the extension of credit or provision of other products or services on the condition that the customer purchase life insurance or an annuity issued by virtue of the powers in the proposed FDLI act.[207]

In the legislatures of the three states that have enacted SBLI, opposition to increasing the dollar amounts that may be sold to any policyholder has stressed that unemployment in the insurance industry might be increased, that SBLI personnel lack training and that policyholders mistakenly may believe that their policies are guaranteed by a state government.

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204. Proposed Federal Depository Institutions Life Insurance Act, *infra* app. § 4.

205. *See id.*

206. Clark, among others, shares my skepticism that few, if any, federal depository institutions will possess the market power or "leverage" to tie the sale of FDLI to an extension of credit. *See* Clark, *The Regulation of Financial Holding Companies, supra* note 174, at 827-28. The Supreme Court in cases litigated under the antitrust laws has recognized, "where the seller has no control or dominance over the tying product so that it does not represent an effectual weapon to pressure buyers into taking the tied item any restraint of trade attributable to such tying arrangements would obviously be insignificant at most." Northern Pacific Railway v. United States, 356 U.S. 1, 6 (1958).

207. *See* Proposed Federal Depository Institutions Life Insurance Act, *infra* § 4.

Testifying in opposition to permitting banks to provide various securities services, witnesses have emphasized the possibility of conflicts of interests. For example, it has been urged that commercial bank trust departments on occasion have purchased stock in commercial customers of the bank or sold property to these customers under circumstances where the trust beneficiaries suffered harm. *See, e.g.*, 1 *Financial Institutions Restructuring and Services Act of 1981 Hearings, supra* note 147, at 690, 748-56 (statement by the Investment Company Institute); Schotland, *supra* note 195, at 141-42. *See generally* Schotland *supra* note 195, at 123-54.

It also has been urged that banks that underwrite eligible municipal securities often hold a disproportionate amount of these securities for their investment accounts. *See* 1 *Financial Institutions Restructuring and Services Act of 1981 Hearings, supra* note 147, at 955; 971-74, 1025-31 (statements by the Securities Industry Association). It seems unlikely, however, that analogous conflicts of interest would occur in the FDLI business.

Each of these arguments also could be advanced in opposition to the proposed FDLI statute. With unemployment today averaging about ten percent, undoubtedly the most poignant of these arguments is that sales of life insurance by federal depository institutions would lead to greater unemployment in the life insurance industry. This argument may be dismissed on a very simple ground. There is no real threat to life insurance employment posed by sale of FDLI. This can be illustrated by examining the record of Massachusetts, the most successful state in selling SBLI. As of 1981, there was approximately $101.4 billion of life insurance in force in Massachusetts.[208] In that year, $3.4 billion, or 3.4%, of the Massachusetts life insurance in force was sold by savings banks.[209] Similarly, in 1981, some $10.1 billion of new life insurance was purchased in Massachusetts.[210] Some $437 million, or 4.3% was sold by Massachusetts savings banks.[211] Even with the substantially lower policy cost of Massachusetts SBLI, the overwhelming majority of life insurance customers continue to purchase their life insurance through individual agents or workplace group policies. For most of these customers, the old rule, that "life insurance is sold, not bought" continues to be the norm.

This lesson is clearly borne out by an analogy from the securities industry. On May 1, 1975, commission rates in the securities industry were unfixed. This permitted discount brokers to compete with the established full-service brokerage houses. The cost savings of purchasing stock from a discount security broker rather than a full-service firm are larger than the cost savings of buying life insurance from a savings bank rather than a life insurance firm. For example, a New York Times article published in December, 1982, reported that the discount broker's commission for buying 100 shares of A.T.&T. at fifty-eight dollars per share from five leading discounters ranged from thirty-three dollars to forty-five dollars. Purchase of the same 100 shares from three leading full-service brokers cost eighty-seven dollars to ninety dollars, approximately two to three times as much.[212] Nonetheless, through the last quarter of 1980, only six percent of all securities sales were made through discount brokers.[213] An SEC estimate in December, 1982, projected that in 1982 discount brokers would make ten percent of all securities sales.[214] Thus, in the securities industry, as in the life insurance industry, advice from an agent or broker appears to be more valued than cost savings by the overwhelming majority of customers.

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208. American Council of Life Ins., *supra* note 1, at 17.
209. *Id.* at 101.
210. *Id.* at 92.
211. *Id.* at 101.
212. N.Y. Times, Dec. 26, 1982, § III, at 1, 8, c.5.
213. Securities & Exchange Commission, The Securities Industry in 1980, 85-86, 102 (1981).
214. N.Y. Times, Dec. 26, 1982, § III, at 1, c.2.

The sale of individual life insurance policies by federal depository institutions would not appear to have a significant impact on employment in the life insurance industry. But whatever impact would occur would be balanced by greater employment in other industries, for the lower costs paid by consumers for life insurance would give them more dollars to spend elsewhere.

A somewhat different argument made in opposition to SBLI is that bank personnel do not possess the same training and competency as life insurance agents, therefore, to permit them to sell life insurance amounts to a form of unfair competition.[215] To a large degree, this point is fully answered by a provision in the proposed statute that requires depository institution personnel to pass the same state licensing examination as life insurance agents.[216] Additionally, it can be urged that depository institution personnel would not have the same on-going training as life insurance agents. This point hardly is persuasive. If on-going training is necessary to ensure competent life insurance sales personnel in a given state, then the state legislature may adopt this as a requirement of licensure. It then would be required both of FDLI personnel and life insurance agents. But until a state adopts on-going training as a competency requirement, there is no reasonable basis for the assertion that FDLI personnel would lack the requisite training to compete in the life insurance market. The relevant state legislature, not the life insurance lobby, should be the appropriate judge of the level of training necessary to competently perform.

Finally, it has been claimed that purchasers of savings bank life insurance may believe that their policies are guaranteed by the state or federal government.[217] Today life insurance policies of Massachusetts savings banks expressly state on their cover sheets that only the assets of the bank's insurance department and of the system-wide general insurance guaranty fund "back . . . obligation under this policy." A similar statement could appear on the cover of FDLI policies, or be required by statute, if this was believed necessary.

## VII. Conclusion

A final point is worth emphasizing. Many of the advantages of the pro-

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215. *See, e.g.*, Shulansky, *The Case Against Increasing the Savings Bank Life Insurance Policy Limit in Connecticut*, 34 J. Risk & Ins. 628, 631-33 (1967).

216. Proposed Federal Depository Institutions Life Insurance Act, *infra*, § 3.

217. *See, e.g.*, D. Johnson, *supra* note 14, at 111-12.

Another variant of the unfair competition argument also is made at the state level. Life insurance opponents of savings bank life insurance state that initially savings bank life insurance was designed by Brandeis for sale to wage earners and today sale is made to a far broader clientele. *See, e.g.*, Berman, *supra* note 14, at 66-70; C. Casady, *supra* note 36, at 27-30. Therefore it is urged that SBLI is no longer fulfilling its original purpose. This argument is a *non sequitur*. If SBLI (or FDLI) is a more efficient product, otherwise free of problems, why should it not be sold? Implicit in this argument is the belief that the life insurance industry should be shielded from marketplace competition.

posed FDLI system would not be enjoyed (or not equally enjoyed) by a general grant of power to federal depository institutions to sell life insurance. As earlier noted,[218] it is not inevitable that banks and savings and loans would be able to sell life insurance as efficiently if they purchased life insurance firms or acted as their agents than if they participated in an FDLI system. The probability is that sales costs and lapse rates would be higher for these institutions if they did not belong to an FDLI system than if they did. Similarly, if federal depository institutions sold life insurance outside an FDLI system several of the likely objections discussed in Part VI loans could be persuasively advanced. While insolvency risks likely would not be great, it is probable that fewer depository institutions would be able to underwrite life insurance outside an FDLI system. This would justify greater concern about the overall concentration of finance. Further, there also might be some risk of tying credit life insurance, although assumedly this risk would be small.

If Congress makes the policy choice that it is appropriate for depository institutions to sell life insurance, it is important that Congress focus on a second policy decision: how should depository institutions be allowed to sell life insurance? The FDLI system proposed in this article would be the system least expensive to consumers and least likely to offend other federal regulatory policies.

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218. *See supra* text accompanying notes 155-56.

ance business.

§ 4. *Conduct of insurance business.* Any federal depository institution acting through its insurance department, after the receipt of the license provided for in Section 3 may make and issue policies upon the lives of persons and grant or sell annuities with all the rights, powers and privileges and subject to all the duties, liabilities and restrictions in respect to the conduct of the business of life insurance conferred or imposed by general laws relating to domestic legal reserve life insurance companies in the state where the federal depository institution is selling life insurance so far as the same are applicable and except as is otherwise provided herein. No federal depository institution, however, may make nor issue any life insurance policy by virtue of the powers granted in this Act to assure repayment of the outstanding balance due on an extension of credit by that institution or any affiliated institution in the event of death, disability or involuntary unemployment of the debtor. Nor may any federal depository institution extend credit or provide other products or services on the condition or requirement that the customer purchase a life insurance policy or annuity contract issued by virtue of the powers granted in this Act. The insurance department shall in all respects, except as is otherwise provided herein, be managed as federal depository institutions are managed under the laws relating to federal depository institutions.

§ 5. *Separation of the insurance department from all other business of the federal depository institution.* The assets of the insurance department shall be liable for and applicable to the payment and satisfaction of the liabilities, obligations and expenses of the insurance department only. The assets of no other department of the federal depository institution shall be liable for the payment and satisfaction of the liabilities, obligations and expenses of the insurance department. The insurance department shall be kept distinct also in matters of accounting and of investment. Expenses pertaining to the conduct of the insurance department and other departments of the federal depository institution such as office rent and the salaries of general officers, shall be apportioned by the trustees or directors of the federal depository institutions equitably among the departments.

§ 6. *Investment of funds.* The funds of the insurance department, whether arising from premiums, annuity contracts, guaranty funds, or from the income thereof, and whether constituting insurance reserve or surplus, shall be invested in the same classes of investments in which the funds of domestic legal reserve life insurance companies in the state where the federal depository institution physically is selling life insurance are required by law to be invested or in which the deposits of the federal depository institution are required by law to be invested, provided, however, that the federal depository institution may make loans on any policy of insurance or annuity contract issued by it to the extent specified in Section 9.

§ 7. *Non-forfeiture; options of insured.* No policy of life insurance issued by any federal depository institution shall become forfeit or void for

non-payment of premium after six full months' premiums have been paid thereon; and in case of default in the payment of any subsequent premium, then, without any further stipulation or act, such policy shall be binding upon the federal depository institution at the option of the insured, either (a) for the cash surrender value or (b) for the amount of paid-up insurance which the then net value of the policy and all dividend additions thereon, less any indebtedness to the federal depository institution on account of said policy, and less a surrender charge of not more than one per cent of the face value of the policy, will purchase as a net single premium for life insurance, maturing or terminating at the time and in the manner provided for in the original policy contract, or (c) for the amount of paid-up term insurance which such net value would purchase.

This section shall not apply to annuity contracts and, in the case of a policy providing for both insurance and an annuity, shall apply only to that part of the policy providing for insurance; but every such policy providing for a deferred annuity on the life of the insured only shall, unless paid for by a single premium, provide that, in the event of the non-payment of any premium after six months' premiums shall have been paid, the annuity shall automatically become converted into a paid-up annuity for such proportion of the original annuity as the period for which premiums have been paid bears to the total period for which premiums are required to be paid under the policy.

§ 8. *Manner of sale and collection of premiums.* Federal depository institutions shall not employ solicitors of insurance, and shall not employ persons to make house to house collections of premiums; but their trustees or directors may establish such agencies and means for the receipt of applications for insurance and of deposits and of premium and annuity payments, at such convenient places and times, of such nature and upon such terms as the General Insurance Guaranty Company may approve. The trustees or directors of a federal depository institution may also, with like approval, appoint any federal or state depository institution its agent to make payments due on policies of insurance and on contracts for annuities, and to perform other services for the insurance department.

The General Insurance Guaranty Company shall only approve a federal or state depository institution or other institution to act as the agent of a federal depository institution issuing life insurance upon receipt of satisfactory proof that one or more employees of the federal or state depository institution or other institution have passed or otherwise satisfied the written examination requirement to be a licensed life insurance agent in the state where the institution serving as agent will sell life insurance and annuities.

§ 9. *The General Insurance Guaranty Company.*

a. The General Insurance Guaranty Company shall be a corporation with the powers specifically provided in this Act including all powers necessary or convenient to administer the General Insurance Guaranty fund and to supervise the sale of life insurance and annuities by federal depository

institutions. The company shall be managed by a board of seven trustees elected by the federal depository institutions issuing life insurance and annuities. Each federal depository institution shall own one share of stock in the company and be entitled to cast one vote in each election.

The initial election of trustees shall occur 180 days after the effective date of this Act. Seven trustees shall be elected to serve terms of one, two, three, four, five, six and seven years. At each subsequent annual election one trustee shall be elected to serve a term of seven years. Each trustee shall serve without compensation but may be reimbursed by the company for the reasonable expenses incurred in attending meetings. Each trustee shall be selected from persons who are trustees, directors or full-time employees of federal depository institutions; provided, however, that no person may serve as a trustee of the company who is a trustee, director, officer, employee or agent of any life insurer other than a federal depository institution. In the event that a trustee dies or retires before his or her term is expired, a new trustee may be elected by the remaining trustees to complete the dead or retired trustee's term.

The trustees of the company shall adopt a code of by-laws which shall prescribe the powers and duties of the company's officers. The trustees also shall select a chairman and the company's president, chief actuary and chief medical officer. The chairman, president, chief actuary and chief medical officer shall hold office for one year and until his or her successor is appointed. The chairman, president, chief actuary and chief medical officer may be re-appointed in the discretion of the trustees.

The president of the company shall be the chief executive officer and shall supervise the administration of the work of the company in accordance with the instructions of the trustees. The president may nominate other officers, employees or consultants to serve the company. The appointment of other officers, employees and consultants shall be approved by a majority vote of the board of trustees.

The trustees shall determine the title, classification, specifications, and salary range of each office and position, and the terms of employment of any consultant; provided, however, that no such salary shall be fixed at more than the salary paid to a cabinet secretary of the government of the United States.

b. Each federal depository institution establishing an insurance department shall enter into an agreement with the General Insurance Guaranty Company which shall provide:

(1) The company shall reinsure the mortality and morbidity risk of each life insurance policy and annuity contract issued or to be issued by the federal depository institution.

(2) The company shall prepare and furnish to the federal depository institution such forms of life insurance policies and annuity contracts as may from time to time be desirable, and such forms shall be the exclusive forms used by the federal depository institution.

(3) The company shall prepare and furnish to the federal depository institution forms for applications for life insurance policies and annuity contracts and for proofs of loss, all forms of books of record and of account, all schedules and reports not otherwise provided for, and all other forms necessary for the efficient operation of the business of the insurance department of the federal depository institution, and such forms, books, schedules and reports shall be the exclusive ones used for their intended purposes by the federal depository institution.

(4) The company shall determine, prepare or procure and furnish to the federal depository institution, tables of: (i) Premium rates for all life insurance policies; (ii) purchase rates for all annuities; (iii) amounts which may be loaned on life insurance policies; (iv) reinsurance premiums to be charged by the companies; and (v) reserves to be held under life insurance policies and annuity contracts. Such rates, charges, fees, loan amounts and reserves shall be the exclusive ones used by the federal depository institution.

(5) The company shall prescribe the standards of health or acceptability of applicants for insurance and annuity contracts to be issued by the federal depository institution and shall have the right to decline any class or classes of risk or reject any particular application or applications, provided, however, that no class of person shall be rejected in violation of federal law.

c. The chief actuary shall determine for each year ending October thirty-first the ratios of actual to expected mortality claims by all federal depository institutions issuing life insurance and shall determine the same ratio for each such federal depository institution analyzed separately. If the calculation of the ratio pertaining to any such federal depository institution shows that the actual mortality experienced is less than the mortality expected to be experienced by all of the federal depository institutions combined, the chief actuary shall send to the federal depository institution a certificate setting forth the amount of such difference, and thereupon the federal depository institution shall send to the General Insurance Guaranty Fund in cash the amount of such certificate. The chief actuary shall also furnish to the trustees of the General Insurance Guaranty Company a certificate in respect to any federal depository institution in which the ratio of the actual to the expected mortality has exceeded the ratio of the actual to the expected mortality for all of the federal depository institutions combined, and thereupon the trustees of the General Insurance Guaranty Company shall pay to such federal depository institution the amount of such excess as evidenced by such certificate.

d. The company shall furnish federal depository institutions, their agencies and policyholders with such services as the majority of the board of trustees deems necessary for the efficient conduct of the business. Expenses of the General Insurance Guaranty Company shall be paid by the federal depository institutions in proportion to their total premium income, or on such other basis as the trustees of the company select. The trustees shall

have the power to excuse any federal depository institution from the payment of expense monies under this section for a period up to ten years after issuing a license to conduct business to the federal deposit institution.

e. On the effective date of this Act, the president of the United States shall name a temporary administrator of the General Insurance Guaranty Company to manage the company until the initial board of trustees is elected and assumes office. The temporary administrator shall have the power to enter agreements with federal depository institutions as specified in section 9(b), provided that the federal depository institution qualifies for a license under section 3. The temporary administrator also shall have power to hire a temporary chief actuary and a temporary chief medical officer as well as other temporary employees. The temporary administrator's salary shall be equal to that of a cabinet secretary of the government of the United States. The temporary administrator shall have the authority to determine the salaries of other officers and employees of the company until the initial board of trustees assumes office.

f. During a period lasting until the last day of the fifth year after the effective date of the Act the government of the United States shall guarantee loans of up to $5 million per year to pay for the annual expenses of the company and up to $25 million to serve as the initial capital of the General Insurance Guaranty fund. These guaranteed loans may be entered either by the temporary administrator or the board of trustees of the Company. The General Insurance Guaranty Company may borrow from federal depository institutions which also issue life insurance under this Act.

§ 10. *Reimbursement of expenses appropriated for the General Insurance Guaranty Company by federal depository institutions.*

In each fiscal year, on or before the tenth day of each month, the federal depository institution shall pay to the trustees of the General Insurance Guaranty Company a sum equal to one twelfth of the total expenditures authorized for that year in the annual budget and any supplemental budget which the trustees shall have adopted. Any sums paid to the company remaining unexpended at the end of any fiscal year shall be deducted from the sums otherwise required to be paid during the next fiscal year.

§ 11. *Payments into general insurance guaranty fund.* Every federal depository institution shall, on the third Wednesday of each month, pay to the General Insurance Guaranty Fund an amount equal to four per cent of all amounts received by it as premiums on policies or in the purchase of annuities during the preceding month. Said sums shall be held as a guaranty for all obligations on policies or annuity contracts of the insurance departments of all federal depository institutions; and said sums shall be applied to prevent or to make good an impairment of the insurance reserve of any federal depository institution. The trustees of the General Insurance Guaranty Company may also borrow money to effect the purposes of this section and any notes or other indebtedness of the General Insurance Guaranty Company not in default shall be legal investments for the life insurance de-

partments of the federal depository institutions and may be carried as admitted assets.

Whenever it shall appear to the General Insurance Guaranty Company that the insurance reserve of any such federal depository institution has been impaired or may be threatened, the company may:

(a) examine the insurance department of such federal depository institution;

(b) make recommendations to correct unsound or unsafe practices in the insurance department of such federal depository institutions;

(c) advance to such federal depository institution from the fund amounts, to be applied in the payment of losses or satisfaction of other obligations on said policies or annuity contracts, necessary to prevent or make good an impairment of its insurance reserve; provided, that any amount so paid to any federal depository institution may be charged to its account, and be repaid out of the surplus funds of its insurance department, at such times and in such amounts and with such interest, as the General Insurance Guaranty Company shall direct; and provided, further, that the amounts so advanced by the General Insurance Guaranty Company to any federal depository institution shall be repaid only as above provided, and shall not be deemed a liability in determining the solvency of its insurance department;

(d) makes loans, secured or unsecured, to such federal depository institution from the fund on such terms and conditions as the trustees may determine;

(e) guarantee the obligations of such federal depository institution on its policies or annuity contracts, or such other obligations of the federal depository institution as the trustees deem necessary, on such terms and conditions as the trustees may determine.

§ 12. *Additional payments to the general insurance guaranty fund; advance payments by the fund.*

a. Every federal depository institution shall upon request by the General Insurance Guaranty Company, pay to it such sums as may be so requested, provided that the sums so requested to be paid to the General Insurance Guaranty Fund by any federal depository institution shall not exceed, in the aggregate, six percent of all amounts paid to it as premiums on insurance policies during the preceding fiscal year. The sums so paid to the General Insurance Guaranty Fund shall be held by it as a guaranty for all obligations on policies or annuity contracts of the insurance departments of all federal depository institutions. Payments under this section shall be in addition to payments under section 11.

b. Whenever the net assets of the General Insurance Guaranty Fund over all liabilities exceed ten million dollars the trustees of the company may reduce the percentage of premiums on insurance and annuities payable to it or altogether discontinue the same; but the trustees may require at any time thereafter the contribution to be made at a rate not exceeding that provided for in Section 12(a).

c. The trustees of the General Insurance Guaranty Company may make advance payments to any federal depository institution which has incurred claims which, based on reasonable mortality and disability assumptions, will require payments by the General Insurance Guaranty Fund to the federal depository institution on account of unification of mortality as provided in section 9, and any such advance payment with interest thereon at a rate fixed by the said trustees shall be set forth in the certificate issued to the federal depository institution and the amount payable or receivable thereunder shall be adjusted accordingly.

§ 13. *Investment of funds of general insurance guaranty fund.* The funds of the General Insurance Guaranty Fund shall be invested in the same classes of securities and in the same manner in which the deposits of a national banking association are required by law to be invested.

§ 14. *Setting a surplus from net profits.* Each federal depository institution shall annually set apart as a surplus from the net profits, if any, which have been earned in its insurance department, an amount not less than twenty nor more than seventy-five per cent thereof, until such surplus amounts to fifty thousand dollars. Thereafter each such federal depository institution may add in any year to its surplus not more than ten per cent of the net profits, if any, which have been earned in its insurance department in such year; unless it receives the approval of the General Insurance Guaranty Company to add to its surplus an amount which would exceed ten percent of the net insurance reserve of the federal depository institution. The balance of the net profits of each year shall annually be distributed equitably among the holders of its insurance policies and annuity contracts, provided, however, that a federal depository institution having an insurance department which has been licensed for over five years, whose surplus is less than five per cent of its net insurance reserve, may distribute to its holders of insurance policies and annuity contracts only such amount as dividends as the trustees of the General Insurance Guaranty Company approve.

§ 15. *Actions; venue; limitations.* Any suit brought on or in respect to any policy or annuity contract issued by any federal depository institution shall be brought in federal district court within two years after the date of the alleged cause of action.

§ 16. *Discontinuance of issuance of policies.* Any federal depository institution may at any time discontinue the issuing of insurance policies and annuity contracts if its board of trustees or board of directors votes to do so. A copy of the vote to discontinue the insurance business shall be filed with the General Insurance Guaranty Company. A federal depository institution which has so voted may insure all outstanding policies and annuity contracts in any other federal depository institution. When a federal depository institution which has voted to discontinue its insurance business has so reinsured its outstanding policies and annuity contracts, it shall transfer all the assets of the insurance department remaining after paying all its liabilities to such reinsuring federal depository institution.

§ 17. *Examination of insurance department of federal depository institution.*

a. At the same time the appropriate federal depository institution regulatory agency examines the federal depository institution, it shall examine its insurance department. At such examinations the relevant agency shall have free access to the vaults, books and papers, and shall thoroughly inspect and examine the affairs of the federal depository institution to ascertain its condition, its transactions, its ability to fulfill its obligations, and whether it has complied with all the provisions of law applicable to it.

b. In making the examinations required by this section, the relevant federal depository institution regulatory agency shall possess all of the same powers to examine records, interview witnesses, and subpoena records or persons that it possesses under federal law to examine the non-insurance operations of federal depository institutions.

§ 18. *Enjoining from doing further business; receivers.* If upon examination the insurance department of any federal depository institution appears to the relevant federal depository institution regulatory agency to be insolvent, or if the relevant federal depository institution regulatory agency finds its condition such as to render the continuance of its business hazardous to the public or to the holders of its policies or contracts, the relevant federal depository institution regulatory agency shall apply or, if such federal depository institution appears to have exceeded its powers or failed to comply with any provision of law, may apply to a federal district court for an injunction to restrain the federal depository institution from further conduct of its insurance business. The court may appoint one or more receivers to take possession of the property of the insurance department.

§ 19. *Annual statement by the federal depository institution.* Each federal depository institution issuing life insurance under this Act shall annually, within sixty days after the last business day of October, file with the General Insurance Guaranty Company a statement showing the financial condition of the insurance department on the last business day of October. Such annual statement shall be in the form required by the General Insurance Guaranty Company. The Company may also at any time require the federal depository institution to make such other statement of condition or furnish such other information concerning the insurance department as the company deems necessary.

§ 20. *Annual statement of general insurance guaranty company.* The General Insurance Guaranty Company shall annually, within one hundred and twenty days after the last business day of October, file with the Congress of the United States a statement showing its financial condition on the last business day of October, and shall also at any time make such statement of condition and furnish such other information concerning its business as the company deems appropriate.

§ 21. *Separability of provisions.* If any section of this Act, or the application of the Act to any person or circumstance, is held invalid, the re-

mainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected by that holding.