

Amendment offered by Mr. Gutierrez and Mrs. Kelly  
to the Amendment in the Nature of a substitute offered by Mr. Oxley

Page 24, after line 2, insert by adding at the end  
the following new section:

SEC. 2123. ENHANCED EFFECTIVENESS OF EXAMINATIONS, 1  
INCLUDING ANTI-MONEY LAUNDERING PRO-2  
GRAMS. 3

(a) DEPOSITORY INSTITUTIONS AND DEPOSITORY 4  
INSTITUTION HOLDING COMPANIES.—Section 10 of the 5  
Federal Deposit Insurance Act (12 U.S.C. 1820) is 6  
amended by adding at the end the following new sub- 7  
section:— 8

“(k) POST-EMPLOYMENT LIMITATIONS ON LEADING 9  
BANK EXAMINERS.— 10

“(1) IN GENERAL.—In the case of any person 11  
who— 12

“(A) was an officer or employee 13  
(including any special Government employee) 14  
of a Federal banking agency 15  
or a Federal reserve bank; and 16

“(B) served 2 or more months during the final 18 months of his 1  
or her employment with such agency or entity as the 2  
examiner-in-charge (or a functionally equivalent position)3  
of a depository institution or depository institution holding 4  
company with dedicated, overall, continuous and ongoing 5  
responsibility for the examination (or inspection) and 6  
supervision of that depository institution or depository 7  
institution holding company; 8  
such person may not hold any office, position, or 9  
employment at any such depository institution, be- 10  
come a controlling shareholder in, a consultant for, 11  
a joint-venture partner with, or an independent con- 12  
tractor for (including as attorney, appraiser, or ac- 13  
countant) any such depository institution or holding 14  
company, or any other company that controls such 15  
depository institution, or otherwise participate in the conduct of 16  
the affairs of any such depository institution or 17  
holding company, during the 1-year period beginning 17  
on such date. 18

“(2) VIOLATORS SUBJECT TO SUSPENSION OR 19  
INDUSTRY-WIDE PROHIBITION ORDERS.— 20

“(A) IN GENERAL.—In addition to any 21  
other penalty which may apply, whenever the 22  
appropriate Federal banking agency determines 23  
that a person subject to paragraph (1) has vio- 24  
lated the prohibition in such paragraph with re- 25

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004

spect to any insured depository institution, other company, or  
depository institution holding company, the  
agency shall serve a written notice or order, in  
accordance with and subject to the provisions of  
section 8(e)(4) for written notices under para-  
graphs (1) or (2) of section 8(e), upon such  
person of the agency's intention to—

“(i) remove such person from office in  
any capacity described in paragraph (1); or

“(ii) prohibit any further participation  
by such person, in any manner, in the con-  
duct of the affairs of any insured deposi-  
tory institution, other company, or depository institution  
holding company for a period of 5 years.

“(B) SCOPE OF PROHIBITION ORDER.—

Any person subject to an order issued under  
this subsection shall be subject to paragraphs  
(6) and (7) of section 8(e) in the same manner  
and to the same extent as a person subject to  
an order issued under such section and sub-  
sections (i) and (j) of section 8 and any other  
provision of this Act applicable to orders issued  
under subsection (e) or (g) shall apply with re-  
spect to such order.

4

H.L.C.

□

“(3) REGULATIONS.— 6

“(A) IN GENERAL.—The Federal banking 7  
agencies shall issue regulations to implement this 8  
subsection, including the manner for determining 9  
which persons are referred to in paragraph 1(B),10  
taking into 11  
account— 12

“(i) the manner in which examiners 13  
and other persons who participate in the 14  
regulation, examination, or monitoring of 15  
depository institutions or depository insti- 16  
tution holding companies are distributed 17  
among such institutions or companies by 18  
such agency, including the number of ex- 19  
aminers and other persons assigned to 20  
each institution or holding company, the 21  
depth and structure of any group so as- 22  
signed within such distribution, and the 23  
factors giving rise to that distribution; 24

“(ii) the number of institutions or 1  
companies each such examiner or other 2  
person is so involved with in any given pe- 3  
riod of assignment; 4

“(iii) the period of time for which 5  
each such examiner or other person is as- 6  
signed to an institution or company, or a 7  
group of institutions or companies, before 8  
reassignment; 9

“(iv) the size of the institutions or 10  
holding companies for which each such 11  
person is responsible and the amount of 12  
time devoted to each such institution or 13  
holding company during each examination 14  
period; and 15

“(v) such other factors as the agency 16  
determines to be appropriate. 17

“(B) DETERMINATION OF APPLICA- 18  
BILITY.—The regulations prescribed or orders 19  
issued under this subparagraph by an appro- 20  
priate Federal banking agency shall include a 21  
process, initiated by application or otherwise, 22  
for determining whether any person who ceases 23  
to be, or intends to cease to be, an examiner of, 24  
or a person having supervisory authority over, 25

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004

insured depository institutions or depository in- 1  
stitution holding companies for or on behalf of 2  
such agency is subject to the limitations of this 3  
subsection with respect to any particular in- 4  
sured depository institution or depository insti- 5  
tution holding company. 6

"(C) The Federal banking agencies shall consult with each 7  
other for the purpose of assuring that the rules and 8  
regulations issued by the agencies under subparagraph (A) are,9  
to the extent possible, consistent and comparable and 10  
practicable taking into account any differences in the 11  
supervisory programs utilized by the agencies for the12  
supervision of depository institutions and depository13  
institution holding companies.14"

“(4) WAIVER.—A Federal banking agency may 15  
waive, on a case-by-case basis, the restrictions im-16  
posed by this subsection if— 17

“(A) the head of the agency certifies in 18  
writing that the grant of such waiver would be not 19  
inconsistent with the public interest; and 20

“(B) the waiver is provided in advance be- 21  
fore the person becomes affiliated in any way 22  
with the depository institution or depository in- 23  
stitution holding company. 24

“(5) DEFINITIONS AND RULES OF CONSTRUC- 13

TION.—For purposes of this subsection— 14

“(A) the term ‘depository institution’ in- 15

cludes an uninsured branch or agency of a for- 16

foreign bank if such branch or agency is located 17

in any State; 18

“(B) the term ‘depository institution hold- 19

ing company’ includes any foreign bank or com- 20

pany described in section 8(a) of the Inter- 21

national Banking Act of 1978; 22

“(C) the head of an agency means— 23

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004

“(i) the Comptroller of the Currency, 1  
in the case of the Office of the Comptroller 2  
of the Currency; 3

“(ii) the Chairman of the Board of 4  
Governors of the Federal Reserve System, 5  
in the case of the Board of Governors of 6  
the Federal Reserve System; 7

“(iii) the Chairperson of the Board of 8  
Directors, in the case of the Federal De- 9  
posit Insurance Corporation; and 10

“(iv) the Director, in the case of the 11  
Office of Thrift Supervision; and 12

“(D) a person shall be deemed to act as a 13  
consultant or independent contractor (including as 14  
an attorney, appraiser, or accountant) for a depository institution 15  
or a depository holding company only if such person 16  
directly works on matters for, or on behalf of, 17  
such depository institution or depository holding 18  
company.”. 19

"(E) Appropriate Agency for Certain Other Companies - For purposes of this  
subsection, the ' appropriate Federal banking agency for a company that is not a  
depository institution or depository institution holding company shall be the  
Federal banking agency on whose behalf the person described in paragraph (1)  
performed the functions described in paragraph (3)."

.(b) CREDIT UNIONS.—Section 206 of the Federal 20  
Credit Union Act (12 U.S.C. 1786) is amended by adding 21  
at the end the following new subsection: 22

“(w) POST-EMPLOYMENT LIMITATIONS ON EXAM- 23  
INERS.— 24

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004



“(1) REGULATIONS REQUIRED.—The Board 1  
shall consult with the Federal banking agencies and 2  
prescribe regulations imposing the same limitations 3  
on persons employed by or on behalf of the Board 4  
as leading examiners of, or functionally equivalent 5  
position, credit unions as are applicable 6  
under section 10(k) of the Federal Deposit Insur- 7  
ance Act, taking into account all the requirements 8  
and factors described in paragraphs (3) and (4) of 9  
such section. 10

“(2) ENFORCEMENT.—The Board shall issue 11  
orders under subsection (g) with respect to any per- 12  
son who violates any regulation prescribed pursuant 13  
to paragraph (1) to— 14

“(A) remove such person from office in 15  
any capacity with respect to a credit union; or 16

“(B) prohibit any further participation by 17  
such person, in any manner, in the conduct of 18  
the affairs of any credit union for a period of 19  
5 years. 20

“(3) SCOPE OF PROHIBITION ORDER.—Any per- 21  
son subject to an order issued under this subsection 22  
shall be subject to paragraphs (5) and (7) of sub- 23  
section (g) in the same manner and to the same ex- 24  
tent as a person subject to an order issued under 25

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004

such subsection and subsection (l) and any other 1  
provision of this Act applicable to orders issued 2  
under subsection (g) shall apply with respect to such 3  
order.”. 4

(c) STUDY OF EXAMINER HIRING AND RETEN- 5  
TION.— 6

(1) STUDY REQUIRED.—The Board of Directors 7  
of the Federal Deposit Insurance Corporation, the 8  
Comptroller of the Currency, the Director of the Of- 9  
fice of Thrift Supervision, the Board of Governors of 10  
the Federal Reserve System, and the National Cred- 11  
it Union Administration Board, acting through the 12  
Financial Institutions Examination Council, shall 13  
conduct a study of efforts and proposals for— 14

(A) retaining the service of experienced 15  
and highly qualified examiners and supervisors 16  
already employed by such agencies; and 17

(B) continuing to attract such examiners 18  
and supervisors on an-ongoing basis to the ex- 19  
tent necessary to fulfill the agencies obligations 20  
to maintain the safety and soundness of the 21  
Nation’s depository institutions. 22

(2) REPORT.—Before the end of the 1-year pe- 23  
riod beginning on the date of the enactment of this 24  
Act, the agencies conducting the study under para- 25

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004

□

graph (1) shall submit a report containing the find- 1  
ings and conclusions of such agencies with respect to 2  
such study, together with such recommendations for 3  
administrative or legislative changes as the agencies 4  
determine to be appropriate. 5

F:\JMW\MLAUNDER\GUTIER.001

F:\V8\092804\092804.608

September 28, 2004