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Resolution Trust Corporation: Structure and Oversight Issues

Statement of
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Before the
RTC Oversight Task Force
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
House of Representatives

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Resolution Trust Corporation:
<u>Structure and Oversight Issues</u>

SUMMARY OF STATEMENT OF
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The frustration with the slow progress RTC has made in disposing of the assets of failed thrifts has generated a number of proposals about restructuring the Resolution Trust Corporation (RTC). Most of these proposals have centered around separating RTC from the Federal Deposit Insurance Corporation (FDIC) and changing the current dual board structure. Additionally, H.R. 2682 would make RTC an executive agency. Questions about RTC's structure are important. Just as important is the need to ensure that any new structure has the people with the right skills in place to make it work.

GAO believes that there must be independent oversight of RTC's operations because of the extraordinary amount of money it will spend and its complex mission. Whether oversight functions should be done by the Office of Management and Budget (OMB) or the Treasury Department is not as important an issue as recognizing the need, and taking the necessary steps, to ensure strong, consistent, effective, and timely management oversight and intervention. It is not clear to us, however, what additional expertise OMB could bring to bear to achieve better oversight of RTC or what benefits would accrue from a more active OMB involvement.

A great number of mechanisms are already in place to oversee RTC's actions, and these may or may not be strengthened if RTC were to become an executive agency. There are numerous laws covering a wide range of matters that would apply to RTC if it were to become an executive agency. It is critical that the applicability of these laws be fully considered and their benefits carefully weighed against their potential to slow down RTC's asset disposition efforts.

Mr. Chairman and Members of the Committee

We are pleased to be here to discuss issues related to the structure and oversight of the Resolution Trust Corporation (RTC). The frustration with the slow progress RTC has made in disposing of the assets of failed thrifts has generated a number of proposals about restructuring RTC. Most of these proposals have centered around separating RTC from FDIC and changing the current dual board structure. The structural questions being discussed are important. Just as important is the need to ensure that any new structure has people with the right skills in place to make it work.

Our testimony focuses on the questions you asked us to address. You first asked that we address whether the standard structure and oversight of federal agencies in the executive branch of government would better serve the goals of accountability and least cost than the continuation of the structure created under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

There is nothing inherent in RTC's current structure that prevents sound oversight from being exercised. Its effectiveness is more dependent on whether or not we have people with the right kinds of skills in leadership roles who are asking the right kinds of questions.

A great number of mechanisms are already in place to oversee RTC's actions, and these may or may not be strengthened if RTC were to become an executive agency. Like any agency in the executive branch, its activities are overseen by the President and Congress, and such agencies as the GAO, and an Inspector General. But unlike executive branch agencies, RTC is subjected to management from a board of directors and additional oversight from an oversight board.

As we pointed out in previous testimony before this Task Force, there are pros and cons to each of the restructuring proposals brought forth.

The most recent effort has been the introduction of your new bill, H.R. 2682, which would, among other things, restructure RTC by (1) eliminating the dual board structure, (2) separating RTC from FDIC, and (3) making it an executive agency. As with the other restructuring proposals, there are pros and cons to this one as well. The bill provides RTC with a chief executive officer who would also chair the new Board of Oversight. This proposed structure could streamline decisionmaking but could also reduce the independence of the oversight function served by the Oversight Board.

There,have clearly been some complexities in operating within the current structure, but RTC management, the Oversight Board and the

RTC Board of Directors have been working to sort out their roles and responsibilities for management and oversight of RTC. The Chairman of the Oversight Board recently stated that problems were to be expected, given the magnitude and complexity of the task. The Oversight Board believes that restructuring RTC would be disruptive and lengthy and should not be the first priority. Instead efforts should focus on appointing a full-time CEO at RTC, who has the credentials and operating latitude to get the job finished. The Oversight Board has recently formed a search committee to identify such an individual.

As we have said before, discussions about restructuring should continue in light of RTC's progress in disposing of financial and real estate assets and should incorporate the views of the Oversight Board. Whatever approach Congress takes, however, it should carefully consider the trade-offs between the benefits of a structural change and the potential for delay and disruption that could result from such a move.

You next asked us to address whether the usual oversight of federal agency activities by the Office of Management and Budget (OMB) would be sufficient or is there some significant purpose to be served by Treasury Department oversight.

We are convinced that there must be independent oversight of RTC's operations because of its unique and complex mission. The extraordinary amount of money that has been, and will need to be, invested in this effort alone justifies a special approach to ensuring accountability and promoting efficiency. Whether the leadership of this function should or should not be in the Treasury Department is not as important an issue as recognizing the need, and taking the necessary steps, to ensure strong, consistent, effective, and timely management oversight and intervention.

It is not clear to us what additional expertise OMB could bring to bear to achieve better oversight of RTC or what benefits would accrue from a more active OMB involvement. In 1989, we reported that OMB's activities were dominated by budget, rather than management, responsibilities.[1] Historically, OMB's overall management leadership efforts have produced limited results because of problems with direction, poor implementation strategies, short-sighted decisionmaking, and insufficient efforts to gain congressional support. Adding responsibility for a nearly $160 billion operation in a rapidly changing, dynamic organization could only complicate these management problems.

You also asked which statutes and regulations would be applicable to a restructured RTC, in contrast to the requirements it must now observe.

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[1] Managing the Government: Revised Approach Could Improve OMB's Effectiveness (GAO/GGD-89-65, May 4, 1989).

FIRREA established RTC as an instrumentality of the United States and classified it as a mixed-ownership government corporation. Under FIRREA, RTC acts in three different capacities: as conservator, receiver, or as a corporation. As conservator, RTC appoints an agent to manage the operations of troubled thrifts. The managing agents are responsible for minimizing operating losses and ensuring that thrift operations are conducted in a safe and sound manner. As receiver, RTC's role is to wind up the affairs of the institution and liquidate the institution's assets, which normally include loans, securities, and real property. RTC acts in its corporate capacity by issuing regulations and guidelines and carrying out other responsibilities set forth in FIRREA. RTC is subject to a limited set of laws that apply to executive agencies. These laws are listed in Appendix I.

If RTC were made an executive agency, there are numerous additional laws covering a wide range of matters that would apply. These are listed in Appendix II. Some of these laws impose administrative and operational requirements on agencies, such as rules governing federal employee pay and benefits. Other laws would relate to RTC's main lines of business and include requirements concerning contracting and environmental matters.

With respect to contracting, executive agencies are subject to a body of statutes and regulations that do not currently apply to

RTC. One such statute is the Competition in Contracting Act of 1984 (CICA), which requires executive agencies generally to acquire goods and services through full and open competition. Another statute is the Contract Disputes Act of 1978, which requires executive agencies to establish procedures for resolving claims relating to contract administration and creates a system for appeals.

Another category of laws that does not now clearly apply to RTC relates to environmental matters. For example, the National Environmental Policy Act (NEPA) requires all agencies of the federal government to prepare an environmental impact statement prior to taking any major federal action that may significantly affect the quality of the human environment.

Finally, you asked whether RTC's restructuring as an executive agency would leave any unresolved questions about the statutes and regulations that apply to it.

We believe that a critical question is whether RTC, acting in its capacity as receiver or conservator, would be subject to the full range of laws that apply to executive agencies, and, more importantly, whether it should be. For example, RTC currently has more flexibility than executive agencies in matters related to procurement. Losing this flexibility may not be a good thing. RTC as conservator or receiver must have the flexibility to quickly and profitably dispose of assets, and the burdens of any laws curtailing that flexibility must be carefully weighed against their benefits. Subjecting RTC to federal contracting statutes may have some public benefit but could greatly slow down its asset disposition efforts. We understand that RTC is currently studying the implications that executive agency statutes and regulations would have on RTC operations, and its conclusions should be carefully considered.

Another area for consideration is the applicability to RTC of federal pay and personnel rules in Title 5 of the United States Code. Many of these pay and personnel rules currently do not apply to RTC. However, if RTC became an executive agency, and Title 5 provisions applied, there would be changes in employees' pay and other personnel rules. To maintain comparability with all other banking agencies, all of which are exempt from governmentwide pay and many personnel rules, a similar exemption would have to be considered for RTC, if it is made an executive agency. Without such an exemption, many employees which currently make up RTC's workforce may leave. This would result in a substantial disruption in RTC activities.

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Mr. Chairman, this concludes our prepared remarks. We would be pleased to answer any questions.

Laws Currently Applicable to RTC

Environmental

Clean Water Act of 1977, 33 U.S.C. 1251 *et. seq.*

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et. seq.*

Costal Barrier Resources Act, 16 U.S.C. 3501 *et. seq.*

Endangered Species Act of 1973, 16 U.S.C. 1531-1544

Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821 *et. seq.*

Safe Drinking Water Act, 42 U.S.C. 300f-300j-26

Toxic Substances Control Act, 15 U.S.C. 2601 *et. seq.*

Miscellaneous

Administrative Procedure Act, 5 U.S.C. 551-559, 701-706

Federal Tort Claims Act, 28 U.S.C. 2671

Freedom of Information Act, 5 U.S.C. 552

Government in the Sunshine Act, 5 U.S.C. 552b

Privacy Act of 1974, 5 U.S.C. 552a

Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*

Note: This list is not all-inclusive and these laws may not apply to RTC in all of its capacities. This list was prepared with the assistance of RTC.

Additional Laws That Would Apply If RTC Was Made an Executive Agency

Procurement

Brooks Act, 40 U.S.C. 759

Competition in Contracting Act of 1984, 41 U.S.C. 252 et seq.

Contract Disputes Act of 1978, 41 U.S.C. 601-613

Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 et seq.

Office of Federal Procurement Policy Act, 41 U.S.C. 401-420

Environmental

National Environmental Policy Act, 42 U.S.C. 4332

Miscellaneous

Civil Service Laws Contained in Title 5 United States Code

Federal Records Act of 1950, 44 U.S.C. 3301

Paperwork Reduction Act of 1980, 44 U.S.C. 3510 et. seq.

Tucker Act, 28 U.S.C. 1491

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