

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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The Honorable John Sparkman, Chairman  
Committee on Banking, Housing and Urban Affairs  
United States Senate

Dear Mr. Chairman:

You requested our comments on S.2050, 93d Congress which, if enacted, would be cited as the "Domestic Enterprise Bank Act."

Concerning the proposed establishment of the bank as a Government corporation, our Office has consistently taken the position that the public interest is best served when congressional control over activities is exercised through annual reviews and affirmative action on planned programs and financing requirements which attend the appropriation processes, and through the application of statutes and regulations which usually govern the operations of Government agencies. We believe that departures from the standard should be permitted only on a clear showing that an activity which is susceptible of operation through a new regular Government agency or through an expansion of similar programs in existing Government agencies cannot be successfully operated in the public interest within that framework.

Section 202 provides for the appointment of a board of directors but is silent with regard to the payment of travel expenses and of compensation. We believe the bill should specify any such payments that may be made to board members.

Section 203 provides for an advisory committee of not less than twenty persons; however, it provides no upper limit on the size of the committee. Also, the section provides for payments to committee members for reasonable expenses incurred on behalf of the Bank but does not specifically provide for any compensation for the time devoted by such members to Bank activities. We believe these matters should be clarified in the bill.

Section 204 provides for capitalization of the Bank up to the amount of \$3 billion, through the sale of corporation stock to the Secretary of the Treasury. This section also provides authority to the Secretary of the Treasury to obtain the funds for the stock purchase by borrowing from the public. This arrangement authorizes the

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so-called "back door" financing method and circumvents the appropriation process. The General Accounting Office has generally favored the financing of Government programs through direct appropriations because of the periodic congressional scrutiny and affirmative congressional action provided by the appropriation process. Such scrutiny is not so readily available to the Congress through "back door" financing techniques.

Section 204(b)(1), which concerns the subscription of stock by the Secretary of the Treasury, states that twenty percent of such subscription "shall be paid at the time of subscription" and that these funds "shall be available as needed by the Bank." We construe the first quoted clause as controlling, and therefore funds may be made available to the Bank before a need develops. If premature purchase is made, interest costs would be incurred by the Treasury to obtain funds for transfer to the corporation prior to a need for the funds by the corporation. To obviate these unnecessary costs, we suggest that this section be amended to read substantially as follows:

"(1) Twenty per centum of such subscription cost shall be payable at any time after the date of incorporation in amounts needed by the Bank for its operations."

This change in language would make clear that funds are to be made available to the corporation by the Treasury only as needed.

It is noted in section 2 (page 2, line 2) that it is a purpose of the act, in contributing to the elimination of poverty, to provide financing "on attractive terms." Section 201 states that "There is hereby authorized to be created a corporation for profit \* \* \*." (Lines 12 and 13, page 8; underscoring supplied.) Further, section 205(a) authorizes the corporation to make, participate in, or guarantee loans, and to insure loans or plan, initiate, own, and manage facilities. We believe it appropriate that this section of the bill express the intent of Congress as to the range of interest rates which may be charged on loans made, indicating the general circumstances when each rate would apply, and to indicate interest rate guides on guaranteed and insured loans. If the corporation is to break even or have a profit as stated in the second line of section 201 then it would be necessary to establish the interest rate structure so as to achieve an overall rate higher than the rates paid on the corporation borrowings. If guides on interest rates are not provided by the Congress, then the corporation might be guided primarily by the "attractive terms" provisions page 2, line 3, and the corporation would incur losses rather than have a profit.

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The effect of section 205(b) would be to authorize the Bank to borrow funds directly from the public through the issuance of bonds, debentures, and other certificates of indebtedness, under subsection 1 and through the sale of its securities under subsection 3. As mentioned above, we have generally favored the financing of Government programs through direct appropriations because of the periodic congressional scrutiny and affirmative congressional action provided by the appropriation process that is not so readily available to the Congress through "back door" financing techniques.

Securities issued pursuant to section 205(b) would be issued on a competitive or negotiated basis at the discretion of the Board of Directors of the proposed Bank. We have observed over the years that interest rates on money obtained from the private sector through agencies other than the Treasury Department, are generally higher than on funds obtained through regular public debt obligations with comparable maturities issued by the Treasury Department.

Assuming that the Congress decides not to finance this program through direct appropriations and that the financing contemplated by section 205(b) should not be done through the Treasury, it is suggested that the activities contemplated by that section might more economically be performed by existing Government personnel with broad experience in this highly technical field. We therefore recommend that the financing transactions under section 205(b) be handled by the Government National Mortgage Association in a manner similar to that provided in the Participation Sales Act of 1966, Pub. L. 89-429 <sup>12 USC</sup> <sub>1717</sub> for certain obligations acquired by other Federal agencies.

We note that under section 204(b) payment of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions. We believe that all capital transactions of the Bank, including those authorized under section 205(b), should be included as a part of the public debt.

Section 207(1) limits financing when other public or private financing is not available on reasonable terms and conditions. Similar provisions are included in the statutes authorizing loan programs of various executive agencies such as the Farmers Home Administration, Economic Development Administration, and Small Business Administration. Thus, it is not clear whether the Bank's loan funds will become available only after a determination has been made that these other agencies will not provide funds on reasonable terms and conditions.

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We note also that the objectives to be attained by the bill appear to be similar to the objectives outlined in existing legislation governing loan programs of the Departments of Commerce, Agriculture, and Housing and Urban Development, and the Small Business Administration. Thus, aside from our question above as to the order of availability of funds under some loan programs, we question under what circumstances financing should be obtained from the Bank rather than from presently existing programs. Furthermore, laws applicable to loan programs of the other agencies, unlike the loans to be made by the proposed Bank specify maximum loan periods. We believe it may be desirable to provide also for a maximum loan period in the bill.

Since the bank is to be a Government corporation, we believe that it should be made subject to the Government Corporation Control Act and that section 209 should be revised to so provide with the added provision that:

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"Notwithstanding the provisions of section 105 and 106 of the Government Corporation Control Act, the financial transactions of the bank shall be audited by the Comptroller General not less than once during each three-year period and reports of the results of each such audit made to the Congress within six and one-half months following the end of the fiscal year covered by the audit."

If the bank is not to be subject to the Government Corporation Control Act, the audit and reporting language in section 209 should be revised to read substantially as follows:

"Sec. 209 The accounts and operations of the bank shall be subject to audit by the Comptroller General at such time and to such extent as he shall determine. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for auditing the accounts and operations, and in verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. A report of any such audit may be made by the

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Comptroller General to the Congress when he deems it necessary to keep Congress informed of the operations and financial condition of the corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable."

Section 210 requires the Bank to submit an annual report to the President and to the Congress but is not specific as to the contents of the report. We believe this section should specifically require that the report include a statement of assets, liabilities, capital and surplus or deficit and a statement of income and expense; and statement of sources and application of funds. Also, it is not clear from this section what shall be the fiscal year of the Bank. We suggest that this section should be amended to show that the operating fiscal year of the Bank shall be the same as the fiscal year of the Federal Government. Several technical reasons are included on enclosed sheet for your consideration.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

Enclosure