2006

The Resolution Trust Corporation and Congress, 1989 – 1993. Part II: 1991 – 1993

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FDIC Banking Review

2006 Volume 18, No. 3

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Part I of this study of the post-FIRREA legislative history of the Resolution Trust Corporation (RTC) appeared in the previous issue of the *Banking Review*. It focused on the period immediately after the RTC's creation in August 1989 through 1990, examining congressional discussion and debate about the RTC's management, operations, and working capital funding. Part II, which focuses on the period 1991–1993, examines the passage of three statutes that affected the RTC's loss funding, management structure, and operations and completes the legislative history of the RTC.

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PART II: 1991–1993

*by Lee Davison**

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The Resolution Trust Corporation Funding Act of 1991

Congress's inability to pass a funding bill in the previous session did not mean that the RTC's funding requirements had diminished in any way. Without additional loss funds and the attendant working capital, the agency would essentially cease operations before the end of the first quarter of 1991. But the political dynamic surrounding the RTC remained difficult. The administration's position was straightforward: the losses within insolvent institutions had already occurred, and delays in funding those losses would only increase costs. In the eyes of many in Congress, however, including even those of the president's own party, giving the RTC more taxpayer money was extremely unpalatable. Although a failure to do so would abrogate the promise to insured depositors, some members of Congress, particularly some House Democrats, adamantly opposed any new funding at all. Others wanted to tie further funding to changes in the organization or operations of the RTC, or to changes in unrelated government policy. Still others sought to weight the burden of paying for S&L losses to certain regions or taxpayers. Some of these suggestions had little chance of being enacted, but they encumbered an already contentious bill, making passage even more uncertain.

Treasury Secretary Brady said the RTC would require $30 billion in loss funds and approximately $47 billion in working capital for fiscal 1991, provided that new loss funding was forthcoming by March 1. If no new funds were appropriated by that date, the RTC would have expended all available loss funds and would be forced to stop closing and selling institutions by the end of February.[1] He mentioned, moreover, an RTC estimate that

* The author is a historian in the FDIC's Division of Insurance and Research. The author would like to thank Tim Critchfield, Timothy Curry, Alice Goodman, Matthew Green, Jack Reidhill and Lynn Shibut for their helpful comments and suggestions. Any errors are, of course, the responsibility of the author.

[1] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on the Semiannual Report* (January 23, 1991), 19; 41–42. See also *BNA's Banking Report* 56 (January 28, 1991), 146.

delay for just one more quarter could result in $750–$850 million in added costs. He suggested that Congress consider an open-ended appropriation that would remove the need for any further votes on funding and would remove the possibility of delays and the extra costs accompanying them. Brady admitted, as well, that the total cost was impossible to estimate exactly but said the administration still believed that the required loss funds would most likely be toward the higher end of the $90–$130 billion range forecast (in 1989 present-value terms.)[2] In other words, perhaps another $50 billion after fiscal 1991 would eventually be required. Brady sought to balance this unwelcome but not unexpected news with a discussion of the RTC's accomplishments and the new measures the agency was undertaking to improve its operations.

No one in Congress was particularly anxious to give the RTC unlimited funds. Both Democrats and Republicans in the Senate were critical of the RTC's (slow) speed in disposing of assets and were therefore less inclined to support unlimited funding. Yet neither of the two ranking members of the Banking Committee wanted to withhold all funds. The ranking minority member, Sen. Jake Garn, said he believed in short leashes but not in "choking the animal to death." Questioning how the RTC did its work was entirely appropriate, he said, but not giving it sufficient funding to carry on its work was "incomprehensible" because a lack of sufficient funding only allowed the problem to continue to grow.[3] The chairman, Sen. Riegle, noting that many legislators had concerns about how well the RTC was performing, asserted that long-term financing was not viable until Congress could consider possible reform of the RTC's structure and operations. He said he would move forward only on interim funding to meet the RTC's needs.[4] At the same time, however, he promised that his committee's first priority would be to ensure that the RTC did not run out of money.

The Senate Banking Committee quickly moved to approve a bill authorizing $30 billion in additional loss funds, the amount requested by Brady for fiscal year 1991. Despite continued criticism of the RTC, fears over the additional costs associated with further delay won out.[5] In addition to the new funding, the bill required the RTC to provide detailed audited financial statements periodically. One other significant provision dealt with protecting RTC employees from liability stemming from the corporation's securitization program.[6] From the RTC's point of view, Seidman remarked that the Senate had passed the bill "essentially the way we asked them to pass it."[7]

As might have been expected, even limited funding did not find such clear sailing in the House. Relations between House Banking Committee Chairman Gonzalez and Treasury Secretary Brady had become increasingly cool, and as House members had demonstrated during the autumn, they were much less willing to support RTC funding. Gonzalez sent a letter to Brady protesting both the size and the indefinite nature of the funding request and said he expected the Oversight Board to submit an analysis explaining the need for $77 billion in loss funds and working capital for fiscal 1991.[8] When Brady came before the committee, he faced a much less cooperative group than the one he had faced in the Senate. Few of the House committee's members seemed moved by the argument that the losses had already been incurred and that delays would only increase costs. Influential Democrats gave notice that they would have to be convinced of the need for more funding; others suggested they would attach amendments that

[2] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on the Semiannual Report* (January 23, 1991), 18–19.

[3] Ibid., 2–3.

[4] Robert M. Garsson, "Riegle Backs Stopgap RTC Funding; Rejects Brady's Request for Permanent Legislation," *American Banker* (January 24, 1991).

[5] "Panel Approves Funds for Bailout," *New York Times* (February 5, 1991).

[6] See S. 419 (February 14, 1991); and *BNA's Banking Report* 56 (February 11, 1991), 243. Under the Securities Act of 1933, RTC and Oversight Board employees could be held personally liable for actions under the program (which was designed to increase asset sales). The RTC was very concerned about this issue and came to the conclusion that the only solution was through legislation. The agency drafted a narrow provision, explaining that the intent of the provision was merely to clarify existing law and not create new law, and met with members of both Banking Committees to discuss it. After the Senate bill passed in committee, the RTC staff was essentially satisfied with the immunity provision the bill contained (RTC Board of Directors Meeting, January 2 and February 5, 1991).

[7] Ibid., February 19, 1991.

[8] *BNA's Banking Report* 56 (January 28, 1991), 146.

would clearly be unacceptable to the administration; and yet others sought action on other fronts before they would contemplate voting for new funding.[9]

Gonzalez refused to move forward without an opinion from the GAO about the RTC's performance. Comptroller General Charles A. Bowsher had many criticisms of the RTC's operations, especially its asset sales, but also stated that it was too soon to judge how well the agency was performing. He believed that other areas needed improvement, including information systems and contracting oversight, but on funding the GAO adopted a middle road: it recommended that the RTC be funded annually because unlimited funding would "effectively eliminate controls," but shorter-term financing was inefficient and likely to increase costs. When asked what grade he would give the RTC for its performance, he replied, "Incomplete," and said that to be fair, the RTC had inherited an enormous mess and was a huge organization created from scratch. Many problems existed, he said, but the RTC was attempting to address them. In any case, the $30 billion request for the RTC should be approved.[10]

The process in the House Banking Committee, however, was fractious, with Democrats seeking to attach various contentious amendments to the bill (H.R. 1103).[11] Reps. Joseph Kennedy and James Slattery proposed a $20 billion appropriation, adding that anything above that amount would have to be paid for through tax increases. The amendment was adopted (28-21), with the support of Gonzalez. Among other amendments, the committee also adopted (27-16) a much more controversial plan that would have required states where the failure of state-chartered thrifts generated high RTC costs to pay 25 percent of the costs associated with failed thrifts in that state; otherwise, the state's state-chartered thrifts would not be allowed to retain federal deposit insurance.[12]

The bill as amended, however, failed to make it out of the committee, by a vote of 19-31, with all committee Republicans voting against it. A Republican attempt to substitute a clean funding bill also failed, 22-27, with most Democrats opposing it. Afterward Gonzalez blamed the administration for refusing to compromise on a shorter-term funding plan, and stated that the RTC bill was "mugged by administration lobbyists determined to block any effort to reform the RTC."[13] Republican Rep. Frank Riggs described the Democratic bill as a "legislative Christmas tree" but "all the ornaments brought the tree crashing down. . . . the Democrats decided to have a legislative party, and yet they wanted the Republicans, the Treasury Secretary, and the RTC to clean up their mess. Well we all refuse."[14]

Meanwhile, the Senate process moved forward, with Riegle supporting that chamber's bill, which simply provided for $30 billion in additional loss funding and required that the RTC provide detailed financial operating plans, schedules of projected insolvencies, and audit and financial statements within six months of the end of the fiscal year. Riegle sought to mollify those pushing for RTC reform and restructuring by announcing that he would hold hearings on those issues in April.[15] Several Democrats nevertheless sought to intro-

[9] Gonzalez suggested that "much of this so-called working capital will ultimately become losses as assets deteriorate." He also noted that many people complained about dealing with the RTC and that its asset sales were "painfully slow" (U.S. House Committee on Banking, Finance and Urban Affairs, *Semi-Annual Appearance* [January 31, 1991], 78–79). Gonzalez's predictions were not realized; working capital advances to the RTC were fully repaid in 1998. "FDIC, RTC Repaid Money Borrowed to Rescue Thrifts," *Wall Street Journal* (December 18, 1998).

[10] U.S. House Committee on Banking, Finance and Urban Affairs, *General Accounting Office Report Card* (February 20, 1991). See also *BNA's Banking Report* 56 (February 25, 1991), 353–54. Bowsher suggested that the time was ripe for a separation of the RTC from the FDIC (meaning that the system of dual boards of directors should be abolished, with the Oversight Board retained). However, he said separation should be done carefully, since so many FDIC personnel were working for the RTC. Many House members, including Gonzalez and Schumer, were in favor of separation. David Cooke supported the move as long as the RTC became responsible for liquidating all assets controlled by the government (Barbara A. Rehm, "RTC Spinoff from FDIC Is Proposed," *American Banker* [February 21, 1991]).

[11] For the amendments, see *BNA's Banking Report* 56 (March 4, 1991), 414–15.

[12] Other Democratic amendments failed; one offered by Rep. Annunzio would have created performance-based funding, where the Treasury appropriations could have only matched asset recoveries. This was soundly defeated 5-43. A similar amendment, introduced by Rep. James Bachus, would have provided $15 billion in funding, with the other $15 billion based on asset sales; it failed on a 9-39 vote.

[13] Robert M. Garsson, "Panel's Vote Threatens S&L Bailout, Reform Bill," *American Banker* (February 28, 1991).

[14] *Congressional Record* H. 1171 (February 27, 1991).

[15] *Congressional Record* S. 2296ff. (February 26, 1991).

duce amendments dealing with management restructuring and lower funding amounts,[16] but Riegle succeeded in having these tabled.[17] Republicans, with little dissent, supported the Senate's relatively clean funding bill, as the administration wished. The Senate bill passed comfortably, 69-30, with the support of more than 80 percent of Republicans and almost 60 percent of Democrats.[18]

The House Banking Committee found it impossible to reach a consensus and chose to allow the matter to be decided on the House floor, though under a rule that limited both debate and amendments.[19] The rule did provide for votes on three competing versions of RTC funding, in addition to a straightforward $30 billion funding bill.[20] One of the alternatives was a proposal by Chalmers Wylie—essentially the clean bill backed by the Bush administration, but including a set of limited management reforms and reports as an enticement to doubting Democrats.[21] One was the Kennedy-Slattery proposal, which was a "pay-as-you-go" bill, authorizing RTC spending but demanding that after the first $20 billion, all future RTC funding be "deficit-neutral." The third alternative was a Gonzalez proposal, which appropriated the $30 billion but attached more substantive reforms.[22]

The points of view embodied in these three proposals had already been debated in committee, and the arguments attached to them were well-known. All three substitute bills failed to pass, and the votes illustrate how deeply held the partisan posi-

[16] Robert Kerrey, who had been critical of the RTC's structure since before its inception and had introduced a bill to restructure the RTC in February, announced he would offer an amendment on the Oversight Board's structure despite Riegle's promise. Kerrey's bill (S. 389, introduced on February 7, 1991) would have abolished the Oversight Board and replaced it with a new board of governors for the RTC with nine members (five presidentially appointed citizens plus the Secretary of Treasury, Chairman of the Federal Reserve Board, Secretary of HUD, and Chairman of the FDIC); the current RTC board would be abolished. The new board was to be an agency of the U.S. government–thus, a separate entity from the RTC. Another bill, S. 572, introduced by Sen. Tim Wirth, also abolished the Oversight Board but would have created an expanded RTC board of directors (four presidential appointees plus a restructured FDIC board [with the OTS director removed, and the Comptroller of the Currency a nonvoting member]).

[17] See *Congressional Record* S. 2610 (March 5, 1991). Both Kerrey's amendment and an amendment by Tom Harkin that would have reduced funding to only $15 billion were tabled, and in the wake of these votes, several other amendments were withdrawn. Democrats opposed tabling amendments more than did Republicans (more than 60 percent of Senate Democrats voted against tabling Kerrey's reform amendment). Broken down along party lines, the votes went as follows: on the Riegle motion to table the Harkin amendment, 40-4 Republican, 31-24 Democrat; on the Riegle motion to table the Kerrey amendment, 42-2 Republican, 21-35 Democrat. See http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_102_1.htm, votes 00021–22.

[18] Ibid., vote 00025.

[19] See U.S. House, H. Res. 105 (March 7, 1991). Some members thought the rule was too restrictive, and some Democrats believed the administration was trying to push the appropriation through Congress without any RTC reform, charging (accurately) that the rule removed provisions previously adopted in committee. The leadership, trying to get beyond the stalemate, supported the rule and it passed easily, 272-146. The proportion of Democrats in favor was only slightly lower than the proportion of Republicans (*Congressional Record* H. 1592 [March 12, 1991]). See also http://clerk.house.gov/evs/1991/roll038.xml.

[20] For discussion of actions in the House, see *Congressional Record* (March 12, 1991); James M. Pethokoukis, "House Panel Passes Two RTC Bills; Quick Action Seen on Bailout Funds," *American Banker* (March 8, 1991); Stephen Labaton, "House Vote Bars More S&L Aid," *New York Times* (March 13, 1991); and Susan Schmidt, "Divided House Refuses $30 Billion for Thrift Cleanup," *Washington Post* (March 13, 1991). For the text of three substitute bills, see U.S. House, *Providing for the Consideration of H.R. 1315* (March 7, 1991).

[21] This proposal required the RTC to take action to achieve eight specified management reform goals: standardize the agency's procedures for auditing conservatorships; reduce the length of time institutions were in conservatorship, with a goal of no more than nine months; make specified improvements to the RTC's information resources management program; develop a centralized system for managing the portfolio of securities under its control; develop an effective system to track and inventory real estate assets; develop a process to update, on a quarterly basis, the value of assets under receivership; develop a program for examining one- to four-family mortgages and for marketing such loans on a pooled basis; and regularly review its organizational contracting structure and standardize its contracting procedures. The RTC would be required, by the end of FY 1991, to report to Congress on its progress toward achieving these goals and to establish a timetable for achieving goals not yet completed.

[22] Gonzalez's bill required the RTC to report exactly how it used allocated funds and to use a least-cost resolution approach. It also provided that the RTC could sell affordable housing from conservatorships to qualified applicants, and required the RTC to create a separate list of the properties that had natural, cultural, scientific, or recreational value. A government agency or a qualified nonprofit organization would be given a 90-day right of first refusal to purchase the property in order to maintain its specific qualities. Finally, the bill established minority contracting goals for the RTC, with contracting activity to be designated as follows: 15 percent to minority-owned businesses and 10 percent to businesses owned by women. Compliance with this goal would be encouraged but not required.

tions still were.[23] The defeat of the three alternatives left the House with the original clean bill, simply providing the RTC with $30 billion in additional funding. House Republicans voted for it by a three-to-one margin (120-42), but the Democratic leadership was unable to persuade its members to support more funding and Democrats voted against the bill by a two-to-one margin (81-177), killing it.[24]

It seemed that the process in the House might once again end in deadlock, but this time there was no $18.8 billion loophole to fall back on;[25] the RTC's operations had already been affected by the uncertainty, and new resolutions were impossible without funding. Having voted down four versions of the bill, the House voted overwhelmingly the next day to consider the Senate's bill and amend it as a way to move forward, through a compromise offered by Gonzalez and agreed to by the administration. The compromise combined some of the provisions in the Wylie and Gonzalez bills voted down the day before: it required reports on spending and minority contracting, mandated some management reforms, and included affordable housing provisions. The House voted 213-197 to amend the Senate bill according to the compromise language, still with limited Democratic support.[26]

When the House considered passage of the bill itself, Gonzalez told members that "to fail to approve funds now is to invite disaster." Failure to act could have meant a real loss of public confidence in the deposit insurance system. The bill passed even more narrowly, 192-181. Speaker of the House Thomas Foley took the unusual step of casting a vote for the bill (the Speaker seldom votes) to indicate to Democrats that the House leadership stood behind the compromise and the funding.[27] Since the House had made changes to the Senate bill, a conference was required. Given the difficulties involved in getting the bill through the House, and since the administration had endorsed the compromise, the Senate agreed to the House additions on issues such as minority contracting and affordable housing.

The law as enacted in March provided for $30 billion in funding for the RTC and included a provision addressing the RTC's fear that its officials might be held personally liable in connection with its securitization program. The law also sought to get more information to Congress in a timely fashion, and was a combination of House and Senate ideas: the RTC's audited financial reports had to be transmitted to Congress within six months of the end of a fiscal year, and quarterly financial operating plans were required. Any delay in submitting either kind of information would result in both the Oversight Board and the RTC being called before Congress to account for the delay. Management reform was also required, but vaguely. The RTC was to take steps to manage conservatorships more effectively and was to set a goal that no institution remain in conservatorship for more than nine months. The law also called for better information systems in general, and for better information systems for securities portfolios and real estate owned in particular. The RTC was to develop better asset valuation processes and was to standardize due diligence programs on certain mortgages. The contracting process was to be improved through the creation of a comprehensive contracting manual, clearer directives, and standardization of contract-

[23] The administration would have likely opposed the Kennedy-Slattery proposal because it would have resulted in either tax increases or budget cuts. Almost all House Republicans voted against it, while about two-thirds of Democrats voted in favor; still, the 82 Democrats voting against it were more than enough to send it to defeat, 186-237. http://clerk.house.gov/evs/1991/roll039.xml. The Wylie substitute was an attempt to assuage Democrats who wanted to reform the RTC, but Democrats believed it to be superficial. It too was defeated, with almost all Republicans voting in favor and about 85 percent of Democrats against. http://clerk.house.gov/evs/1991/roll040.xml. Finally, the House turned to the Gonzalez substitute, with its greater emphasis on social issues. Republicans voted wholeheartedly against it, but about 45 percent of Democrats did as well, and it was defeated 121-303, its demise doubtless aided by the threat of a presidential veto. http://clerk.house.gov/evs/1991/roll041.xml. See also Stephen Labaton, "$30 Billion Bailout Bill Is Passed," *New York Times* (March 14, 1991).

[24] http://clerk.house.gov/evs/1991/roll042.xml.

[25] See Part I of this article (51–53) for a discussion of the $18.8 billion loophole.

[26] http://clerk.house.gov/evs/1991/roll050.xml. The Democratic vote was 95-157 against.

[27] http://clerk.house.gov/evs/1991/roll051.xml. See also Robert M. Garsson and Barbara A. Rehm, "Denied Funds, RTC Will Be Closing Shop," *American Banker* (March 14, 1991).

ing documents and training procedures. A report on how the RTC had responded to these goals for management reform was required by September 30, 1991.

On affordable housing, the RTC was now allowed to sell eligible single-family properties to qualified entities without regard to minimum purchase price, a provision that Gonzalez had supported. The law also required that the RTC, in its semiannual report, provide information on all its actions to implement the minority outreach program mandated by FIRREA. This was certainly much less specific than the percentage goals Gonzalez had pushed in the House, although the conference committee did urge the RTC to make every effort to make contracting available to minorities and women.[28] On social issues overall, however, the final version of the bill resembled the Wylie approach far more than the Gonzalez approach.

Since the fall of 1990, essentially two battles had been waged: whether to provide the RTC with more funds (something that Congress had no real choice but to do), and under what conditions to provide it. Since taxpayer funding was required, Congress had a very real obligation to ensure that the RTC used those funds well. But "reform" of the RTC was often enmeshed in political and ideological quarrels that were not always directly related to the RTC's central purpose. By March 1991, with the repercussions of shutting down the RTC imminent, Congress managed to find a solution that funded the RTC through September 1991 but that clearly dissatisfied those who wanted changes in how the RTC was managed and operated. After the vote, Gonzalez stated that many, himself included, wanted more reform, and he promised that "we will be back again on the next round of funding to ensure that RTC does get its act together."[29] Given that estimates suggested that the RTC's funding would last only through September, the next round was obviously close at hand.

The Resolution Trust Company Refinancing, Restructuring and Improvement Act of 1991(RTCRRIA)

Indeed, Congress had little choice but to return to the RTC almost immediately. During the second half of 1991 two issues needed to be resolved—continued funding and structural and operational reform. The administration wanted sufficient loss funds to end any need to return to Congress for further appropriations and thought nothing significant was to be gained from a major restructuring of the agency. Many congressional Democrats (and some Republicans) were displeased enough with the RTC's performance that they were determined to withhold funding unless the agency was substantially restructured and many of its operations were reformed. They charged that the RTC as constituted simply was not working and that change was necessary.

Political strategies played a role in the reform discussion, and the funding debate (which became a reenactment of past partisan action) would end in yet another unsatisfactory last-minute compromise. Deciding on a restructuring plan was difficult, and with a proliferating number of proposals and a multiplicity of actors with differing points of view, the path it took was convoluted. Despite the administration's opposition to any restructuring, by June RTC Chairman Seidman clearly began to embrace restructuring in some form. In September, as the certainty grew that no funding would be approved without it, the administration announced its own legislation for restructuring. Several in Congress also offered bills to reform the RTC.

Although the legislative agenda was complicated by the need for Congress to pass a major banking law (the Federal Deposit Insurance Corporation Improvement Act) during the same session, just before Congress recessed in November it passed a set of reform and restructuring proposals, along with limited funding provisions. As described

[28] U.S. House, *Resolution Trust Corporation Funding Act of 1991, Conference Report* (March 19, 1991), 11.
[29] *BNA's Banking Report* 56 (March 18, 1991), 54.

above, the bifurcated structure set up under FIRREA was far from ideal, and the RTC Refinancing, Restructuring and Improvement Act of 1991 significantly shifted responsibility for RTC operations. It is debatable, however, whether these shifts made much real difference in the speed and effectiveness with which the RTC carried out its mission. Ironically, as criticism of the agency was persisting into late 1991 and forming part of the debate about the law that eventually passed, observers could see that the RTC, despite its faults and problems, was actually making significant progress toward achieving its goals.

During the spring and summer of 1991, there was no shortage of ammunition for the RTC's detractors. In April, the GAO announced that uncertainties in the RTC's cost estimates could mean both higher costs and lower asset recoveries. The GAO report also labeled the agency's internal controls deficient. In June, the GAO stated that it could not complete its 1990 audit of the agency because financial statements had been unavailable until April.[30]

As the legislative process geared up for a new funding bill, congressional Democrats lost no time setting out their positions. Frank Annunzio recommended eliminating the RTC altogether in favor of a private sector program.[31] Bruce Vento, in a report of the RTC task force, recommended recreating the RTC as an independent agency with its own board, and claimed this was meant to streamline the process, not just lead to a "reshuffling of the organizational deck."[32] The momentum clearly lay with linking management change to any new loss funding.

The administration was not a willing partner in these plans, but Seidman, who had openly expressed his reservations about the structure since the debate over FIRREA, indicated he was considering management change. He did not at this point publicly endorse such change, for he said it could be disruptive, but he did reiterate his belief that the current structure was "awkward" and "not ideal." He said the RTC itself should confront the issues because any change generated by Congress would be highly politicized and could lead to "a train wreck." It was reported that the RTC was leaning toward supporting a structure with a single leader and board of directors.[33]

Still, in public during May Seidman maintained that it would be a mistake to undertake restructuring, especially since communication between the RTC and Oversight Board had significantly improved.[34] The administration, trying to stave off large-scale structural changes, announced the creation of a working group headed by Robson and Alfred DelliBovi (from the Department of Housing and Urban Development [HUD]) to identify and correct management problems at the RTC.[35] Criticism, however, continued. In mid-June, William Rivoir, the Arizona superintendent of banks, told an RTC regional advisory board that the RTC was harming local real estate markets and that its operations were "illegal, immoral, wasteful, and downright stupid." He argued that the only a complete overhaul could fix the RTC's problems.[36] The fact that the regional chief in the RTC's Kansas City office spent $26,000 on art for the office did nothing to foster positive perceptions of the agency.[37]

The first legislation on restructuring since Sen. Kerrey's bill in February was introduced by Rep. Vento in June. Arguing that the RTC lacked leadership, he presented a bill (H.R. 2682) that abolished the Oversight Board, separated the RTC

30 Ibid. (April 22, 1991), 748; ibid. (June 17, 1991), 114.

31 Ibid. (April 22, 1991), 748.

32 Ibid.

33 It was reported that a draft plan would be sent to the Oversight Board and Treasury but that statutory change would be necessary to effect this change (Greg Hitt, "Resolution Trust Corp. Initiates Review That Could Lead to Changes in Agency," *Wall Street Journal* [April 22, 1991]).

34 *BNA's Banking Report* 56 (May 27, 1991), 1014ff. Indeed, in April the RTC had decided to revamp the structure of the communications between the two entities by setting up a liaison group to organize the flow of information as well as freeing RTC operations personnel to concentrate on their duties. (RTC Board of Directors Meeting, April 16, 1991).

35 Bill Atkinson, "2 Named as Panel for Correcting RTC Problems," *American Banker* (June 11, 1991). The RTC Advisory Board (which had regular public meetings) had been created under FIRREA to provide private sector expertise, particularly on matters having to do with the disposition of real estate. FIRREA also created regional advisory boards.

36 Stephen Labaton, "Seidman Will Seek $80 Billion," *New York Times* (June 19, 1991); BNA's Banking Report 56 (June 24, 1991), 1198ff.

37 Susan Schmidt, "RTC Office Art Stirs a Storm in Kansas," *Washington Post* (June 12, 1991).

from the FDIC, converted the RTC into an independent agency, and established the position of RTC CEO.[38] The next day Philip Searle, chairman of the RTC Advisory Board, testified before Congress and called for experienced real estate professionals to head the RTC, noting that using "career bureaucrats," particularly for asset disposition, was inappropriate. The Home Builders Association also argued for a private sector real estate professional to head the agency.[39]

By this time, despite the administration's desire to maintain the current structure, the congressional debate had shifted: the question was not whether but how to change the structure.[40] When Seidman testified before the Senate in June asking for $80 billion in additional loss funding for the RTC, he also decided to put forward two possible management reforms. Both proposed reforms would dramatically lessen the FDIC's part in the S&L cleanup: the FDIC would no longer serve as manager of the RTC. One reform would have maintained the current dual board structure, but with an expanded Oversight Board in charge only of basic policy, such as funding; operations would be the responsibility of a new RTC CEO, acting in concert with a small RTC board. Seidman's other reform was a more radical departure from the existing structure, calling for a corporate board, a CEO, and an executive committee; the corporate board would be an expanded version of the Oversight Board, with all the responsibilities of both the current Oversight Board and the RTC board; the CEO (who would sit on the board) would control all agency staff; and the executive committee would act on the board's behalf.[41]

RTC and FDIC Chairman Seidman argued that his proposals were designed simply to streamline management; he also said that since the RTC had grown up, it was time "to kick it out of the nest." Some observers thought the FDIC was trying to rid itself of the intense criticism as well as the onerous job of running the RTC. Economist Robert Litan said it seemed as though the FDIC were "parachuting out and watching the RTC drift out to sea," a move he called "a very rational strategy." The FDIC denied that this was Seidman's motivation.[42]

When Treasury Secretary Brady testified before the Senate several days later, he asked for both $80 billion in loss funding and an increase in working capital. The request for increased funding caused attention to focus on management reform. Even though the Senate had always been (and was still) more likely to approve funding increases than the House, it was becoming clear that reform had to accompany funding. Brady argued against the kind of overhaul proposed by Seidman and the kinds espoused by congressional critics of the RTC. The administration's solution was to adopt one feature of reform—the creation of a CEO—saying this would provide the RTC with needed direction, not require legislation, and avoid disrupting the agency.[43] The division between Seidman and Brady was clear. The latter argued for minimal change; Seidman said that either of his alternatives was preferable to the present situation and that in any case the FDIC's position as manager of the RTC should end.[44]

[38] *BNA's Banking Report* 56 (June 24, 1991), 1195. For Vento's views, see also U.S. House Committee on Banking, Finance and Urban Affairs, Subcommittee on Financial Institutions Supervision, Regulation and Insurance, Resolution Trust Corporation Task Force, *Consideration of the Implications* (June 17, 1991).

[39] U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Consumer and Regulatory Affairs, *Real Estate Disposition Activities* (June 19, 1991), 3ff., 150ff.; Leslie Wayne, "S&L Advisory Panel Asks a New Manager for Bailout," *New York Times* (June 20, 1991); and *BNA's Banking Report* 56 (June 24, 1991), 1197.

[40] Kevin G. Salwen, "RTC to Seek $75 Billion More in Thrift Bailout," *Wall Street Journal* (June 20, 1991).

[41] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Restructuring the Resolution Trust Corporation* (June 11, 21, and 26, 1991), 273ff.

[42] Leslie Wayne, "S&L Advisory Panel Asks a New Manager for Bailout," *New York Times* (June 19, 1991); Bill Atkinson, "Seidman to Suggest Limiting FDIC's Role in S&L Bailout," *American Banker* (June 20, 1991); and *BNA's Banking Report* 56 (June 24, 1991), 1194. At the same time, it was rumored that Treasury, not happy about its relations with the RTC, wanted David Cooke removed from his job in order to realign management. This rumor engendered a brief flurry of accusations that Cooke was being made a scapegoat, along with public statements that he was not. (Leslie Wayne, "Seidman Asks for Hiring of a 'Strong' Bailout Chief," *New York Times* [June 22, 1991]; and Susan Schmidt, "Treasury, RTC Ties Strained Over Report of Cooke Ouster," *Washington Post* [June 22, 1991]).

[43] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Restructuring the Resolution Trust Corporation* (June 11, 21, and 26, 1991), 414–15.

[44] Ibid., 269ff.

The House had always been more vociferous in its criticism of the RTC, and this debate proved no exception. The need for $80 billion in additional loss funds, a need acknowledged by the Senate Banking Committee, gave rise to criticism in the House, with RTC critics like Annunzio calling the RTC "a black hole" for taxpayer funds and suggesting that the agency be disbanded in favor of a private sector solution to the problem of asset disposition.[45] Gonzalez stated that approval for more funds would probably not be forthcoming without significant reform.

Beyond funding and management, House Democrats had another concern—that the RTC was not executing the social policy elements of FIRREA (the provisions concerning minority contracting and affordable housing). There had been reports that few minority asset-management companies were receiving contracts from the RTC. The agency argued that few minority firms were large enough to handle many of the contracts, but unsuccessful minority bidders disputed this contention. Jesse Jackson, head of the Rainbow Coalition, said the RTC could break up contracts into smaller parcels, and in June Seidman promised to do so.[46] RTC critics also argued that the agency was not implementing the affordable housing provisions of FIRREA. Groups such as Citizens United for Economic Development complained that it was difficult to get financing for RTC properties. During the spring of 1991, lawsuits in Texas and Arizona charged that the RTC ignored FIRREA's affordable housing requirements. The RTC replied that the requirements were hard to meet, but Democrats in Congress charged that the Bush administration had chosen to disregard those portions of the law.

The summer passed with further hearings and continued public debate. The Oversight Board drafted a bill that, not surprisingly, retained much of the current management structure. The Oversight Board would remain and would have the power to decide on the appointment of a CEO, who would be added to the Oversight Board. The FDIC board would continue to act as the RTC board, with the CEO added to that board as well. The FDIC would continue to be the exclusive manager of the RTC, but the CEO would have considerable authority to run the agency. On funding, the Oversight Board's bill called for $80 billion in loss funds and a $160 billion limit on working capital. It also extended for an additional year the RTC's authority to resolve institutions, and in an effort to placate critics, it provided for the appointment of an executive-level officer to direct outreach programs to minorities and women. Apparently Sen. Riegle also submitted a draft bill, one that seemingly adopted much of Seidman's corporate board model as its basis: it abolished the Oversight Board, created an expanded RTC board with a CEO who was responsible for policy and operations, but placed funding responsibility with the Treasury.[47] Other possible outcomes were the two Seidman plans, the Vento bill, and the plans introduced in the previous session by Senators Kerrey and Wirth (see note 16).

The divergence of opinion between Seidman (representing the FDIC/RTC) and Treasury persisted.[48] The Treasury's minimalist plan was not likely to placate the RTC's critics, partly because Congress wanted far more change than Treasury did and partly because Congress saw Seidman as the more trustworthy guide. During August and early September, the RTC and FDIC were drafting revised versions of the Oversight Board's bill as part of their discussions with the administration about putting forward a bill with more substantive changes. By early September, the administration had agreed, albeit reluctantly, to a bill that removed the FDIC as exclusive manager, reduced

[45] U.S. House Committee on Banking, Finance and Urban Affairs, *RTC Semiannual Report* (July 11, 1991), 5.

[46] *New York Times* (June 4 and 7, 1991).

[47] RTC MSS LEGH-68 Restructuring Bills. Memo from Kymberly Copa to Randall McFarlane, "Oversight Board's Draft Bill to Reorganize and Restructure the RTC" (July 29, 1991).

[48] In suggested amendments to the Oversight Board plan, the FDIC/RTC proposed that the FDIC be removed as exclusive manager, that increased authority be delegated to the CEO, and that the Oversight Board have less accountability for the RTC's performance (RTC MSS LEGH-68 Orig. Oversight Bd. Restruct. Memo from Kymberly Copa to Randall McFarlane, "Outline of Suggested Changes to the Oversight Board's Bill to Restructure the RTC" [August 19, 1991]).

the Oversight Board's responsibility, established the CEO position by statute, added the RTC CEO to the RTC board, and added both the FDIC Chairman and the RTC CEO to the Oversight Board—all of which brought the bill much closer to what Seidman had envisioned. Robson and Seidman reached an agreement that at the hearing scheduled for September 12, Robson would maintain the position that the Oversight Board did not believe such changes were "necessary or desirable" but that if a majority in Congress insisted, the administration would agree to the RTC/Treasury compromise restructuring plan. Seidman, for his part, would state that he favored the restructuring plan (acknowledging the difference of opinion with the Oversight Board) but that both had agreed to the compromise proposal.[49]

Seidman and Robson testified about the compromise they had reached. Robson's reluctance was clear: the administration preferred to maintain the present structure but with the addition of a CEO. "I really think that Congress is going to make one big mistake if it folds the tent and recreates this thing in its own way because you are going to have nothing but one hell of a lot of confusion and a lot of disruption and you are not going to buy yourself anything from it." Democratic Rep. Douglas Barnard counseled Robson that Treasury ought to support the compromise, telling him, "I'd rather offer something than take what Congress was going to give you."[50] Robson's later comments showed that the administration had taken this to heart: "If we're going to get hit by a truck, what type . . . would we like to get hit with?"[51] The compromise proposal was introduced by Rep. Marge Roukema.[52]

Although the precise character of the restructuring remained uncertain and competing versions still needed to be reconciled, the agreement reached by the FDIC/RTC and the administration made that issue less contentious; the agreement also made it far less likely that more sweeping plans such as Vento's would gain widespread support. Indeed, the administration now lobbied Congress in favor of the compromise restructuring, hoping to persuade members that this was all the change needed. Robson and Seidman met with numerous members of Congress, both supportive and not, during late September and early October. House Banking Committee Democrats perhaps needed the most attention, but conservative Republicans were also unhappy, some of them believing that the RTC essentially amounted to a socialization of the American economy. Rep. Newt Gingrich introduced a bill in October that terminated the agency fully two years before the FIRREA termination date, at year-end 1994.[53] (Republican disaffection with the RTC would become much more obvious in 1992.)

The administration moved forward on finding a CEO for the RTC, announcing that Albert Casey, former head of American Airlines and former Postmaster General, had been selected for the job. Since the administration believed that no statutory authority was necessary to install him, Casey was expected to be in the position in October.[54] Smooth passage of the legislation did not, however, ensue.

Congressional Democrats, while hoping to push for the more significant structural changes as well, quickly signaled a return to the funding issue. Reps. Annunzio, James Bacchus, and John W. Cox introduced a bill tying RTC funding to assets sales (they also supported the Vento restructuring plan).[55] When this element of their bill was

[49] RTC MSS LEGH 68. Treasury's Restructuring Bill. Letter from John E. Robson, deputy Treasury secretary, to L. William Seidman, chairman, FDIC, September 9, 1991. The day before the hearing, Democratic Rep. Peter Hoagland introduced yet another bill along the lines of Seidman's corporate board model. See H.R. 3303, introduced September 11, 1991.

[50] U.S. House Committee on Banking, Finance and Urban Affairs, Subcommittee on Financial Institutions Supervision, Regulation and Insurance, *Resolution Trust Corporation Refinancing* (Sept. 12 and 17, 1991), 45.

[51] *BNA's Banking Report* 57 (September 16, 1991), 413; and Leslie Wayne, "Congress is Given Plan to Alter S&L Rescue," *New York Times* (September 13, 1991).

[52] H.R. 3356. The bill also contained the $80 billion loss funding, a new working capital limit of $160 billion, and the provision to extend by one year the deadline by which the RTC could accept institutions for resolution.

[53] H.R. 3449. The bill was not acted on.

[54] Susan Schmidt, "Albert Casey Tapped to Head RTC," *Washington Post* (September 24, 1991).

[55] Bacchus introduced H.R. 3422 on September 26, 1991; among its provisions were those tying RTC funding to asset disposition, making the RTC an executive agency when procurement issues were concerned, limiting amounts paid for legal services, and barring certain former S&L employees from RTC work.

offered as an amendment in subcommittee, it was defeated.[56] Rep. Joseph Kennedy attempted another previously unsuccessful tactic, proposing an amendment that would give the RTC only $20 billion and, more importantly, would make any further funding contingent on the president's submitting a plan to pay for it. Kennedy's amendment was narrowly approved in subcommittee (18-17). Republicans stated that since Kennedy's amendment did not specify how that funding would be paid for, it violated the 1990 budget agreement and was therefore "doomed." One committee staff member noted that it was ironic that Democratic "free spenders" had become fiscal conservatives when it came to funding the RTC.[57]

The subcommittee considered a host of other amendments, mostly from Democrats. The subcommittee approved an amendment introduced by Annunzio designed to reimpose a meaningful working capital constraint as well as amendments that required additional audit requirements, limitations on the acceptance of brokered deposits, and changes to contracting processes. The one significant restructuring change agreed to was the presidential appointment and Senate confirmation of the new RTC CEO, as well as a further reduction in the role of the Oversight Board.[58] The more radical structural proposals, such as making the RTC an executive agency and a wholly owned government corporation, were rejected. A series of amendments designed to address concerns about minority- and women-owned businesses' participation in both the contracting and the acquiring of failed institutions were also added to the bill, although Republicans successfully weakened the proposed provisions, arguing that they were excessive and added more costs and burdens to the RTC.[59]

On October 8, the subcommittee voted 20-16 (mostly on party lines) to report H.R. 3435; Kennedy's pay-as-you-go provision, despite attempts by Republican members to remove it, remained in the bill. Robson called the bill both flawed and inadequate, saying it failed to provide sufficient funding, created new bureaucratic obstacles, and violated the 1990 budget agreement. He exhorted the full committee to address these problems and said that if the funding provision remained, he would advise Bush to veto the bill. Chalmers Wylie predicted that the House Banking Committee would not remove the provision and that a veto would follow. Kennedy argued he was simply attempting to reduce the budget deficit.

No equivalent of the administration bill had been introduced in the Senate, but as noted above, during the previous session long-standing critics of the RTC's organization had introduced bills to restructure it, and in late October, two Senate hearings on the issue took place.[60] John Robson again defended the need for a separate Oversight Board, citing the GAO's advice that the Oversight Board should be maintained and that any restructuring should minimize disruption. Albert Casey, just installed as RTC CEO, made his first appearance before Congress and advocated the administration's position as well. Kerrey and Wirth maintained that more substantial changes should be made. During the second hearing, senators heard complaints from people in the real estate industry about dealing with the RTC, and Riegle drew a parallel between perceived problems at the lower levels of the agency and the problems he observed at the top. He suggested that the structural problems at the RTC led to poor or inconsistent treatment of prospective bidders for RTC property.[61]

56 During the previous session Annunzio had tried but failed to enact this sort of constraint on the RTC.

57 *BNA's Banking Report* 57 (October 7, 1991), 562.

58 U.S. Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Consumer and Regulatory Affairs, *Oversight Structure* (October 23, 1991), 65.

59 Even more controversial issues were withdrawn. Vento had introduced an amendment along the lines of the single-board model.

60 U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Consumer and Regulatory Affairs, *Oversight Structure* (October 23, 1991); and U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Refunding the RTC* (October 24, 1991).

61 Ibid., 29. Seidman, who had recently left his posts with the FDIC and RTC and could therefore be thought to have had no political axe to grind, still maintained that the compromise he had worked out with Treasury was the best method to restructure the agency (ibid., 47–48).

In early November, Riegle introduced a Senate bill that called for a much more significant restructuring than the administration wanted, one that was similar to Seidman's corporate board model. The bill abolished the Oversight Board, set up a single RTC Board of Directors to be chaired by a presidentially appointed (and Senate-confirmed) RTC CEO (the other members being the Treasury Secretary, Chairman of the FDIC, and two independent members). This new, smaller board would have full responsibility for oversight and management of the RTC but would delegate operating authority to the CEO.[62] This bill never came up for a vote.

Although Riegle's bill was not acted on, the House Banking Committee did move forward, on November 20 approving the bill with the controversial funding provision, 27-25, again essentially along party lines. As in subcommittee, Republicans sought to remove the funding provision by offering a substitute that included everything but the pay-as-you-go provision, therefore containing elements that many Republicans and the administration would have rejected but also giving the RTC permanent and open-ended funding, something few Democrats would support. The committee did approve a host of amendments, mostly by voice vote. At this point, however, the prospects for agreement appeared dim. Speaker Foley noted that the House would not adjourn without providing some RTC funding, stating, "There is no way it can be left totally to sometime next year"—but predicting the amount might well be less than the administration had requested.[63]

RTC and administration officials commented that new funding was essential and contended that many held an unjustifiably jaundiced view of the agency and its accomplishments. Casey argued that the RTC was actually ahead of schedule, having resolved large numbers of institutions since its inception as well as having sold $200 billion in assets, including many hard-to-sell assets. Critics, he said, should recognize that improvements had taken place, and while he stood ready to work with Congress, the legislature had to stand behind the government's pledge to depositors with the requested $80 billion. Peter Monroe of the Oversight Board echoed the request for funds.[64]

Congress was, however, again finding it difficult to provide those funds. In 1990 when legislators waited until the last minute but were unable to act, they had the $18.8 billion loophole to keep the RTC going until more funds were appropriated. This time they had no such way out; on October 10, the RTC had withdrawn 14 larger thrifts and numerous small ones from the resolution schedule. William Roelle stated that the RTC had sufficient money to operate, but not enough to consummate any new deals.[65]

On November 27, perhaps with members realizing that not providing any funding would be problematic, Congress approved a compromise that had been put forward after the House rejected the bill approved by the Banking Committee. The compromise provided $25 billion in new loss funds but mandated that the money could be used only until April 1, 1992, forcing Congress to return yet again to the RTC in its next session. The bill also included changes in the RTC management structure, provisions on aiding minority- and women-owned businesses, and provisions expanding affordable housing programs. House members were sufficiently anxious to distance themselves from the legislation that it was, unusually, passed by a voice vote. Senators had intended to do the same, but Paul Wellstone forced a recorded vote; the bill passed 44-33.[66] President Bush, urging lawmakers to fully fund the RTC on their return, signed the bill on December 12.[67]

[62] S. 1943, the Resolution Trust Corporation Reform Act of 1991, was introduced on November 7.

[63] *BNA's Banking Report* 57 (November 25, 1991), 850.

[64] Peter H. Monroe, "Fund the RTC," *New York Times* (November 25, 1991).

[65] Barbara A. Rehm, "Lacking Cash, RTC Delays Big S&L Sales," *American Banker* (October 11, 1991).

[66] See vote 00280, http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_102_1.htm. See also Stephen Labaton, "Congress Votes $100 Billion Bank and S&L Aid," *New York Times* (November 27, 1991). It was noted that although there was not a recorded vote in the House, 112 were counted in favor, with 63 opposed.

[67] "Bush Signs S&L Bill," *New York Times* (December 13, 1991).

As noted, RTCRRIA provided up to $25 billion in new loss funds to be available through April 1, 1992. The changes in the working capital limit that the administration had sought were not incorporated into the law.[68] As the administration had requested, the time limit on the RTC's power to take over insolvent thrifts was extended from August 9, 1992, to October 1, 1993. The restructuring provisions, which would take effect February 1, 1992, were a mix of the various ideas that had been discussed during the previous year. The Oversight Board was renamed the Thrift Depositor Protection Oversight Board; its membership was expanded to seven members with the addition of the CEO, the FDIC Chairman, and the director of the Office of Thrift Supervision, and the removal of the secretary of HUD; and its ability to insert itself into RTC operations was curtailed. The position of CEO was created by the statute, and the person filling the position had to be appointed by the president and confirmed by the Senate. The FDIC was removed as the exclusive manager of the RTC, the RTC's Board of Directors was abolished, and the job of running the RTC was given to the CEO.

Insofar as social policy was concerned, several proposals introduced by Democrats in the House were included in the law. For example, the technical evaluation procedure for selecting contractors was changed in such a way that minority- and women-owned businesses (MWOBs) would receive preferential treatment. The law also sought to encourage the operation of branch facilities by MWOBs: the RTC could make available branches of failed thrifts located in predominantly minority neighborhoods to minority- or women-owned depository institutions.[69] In addition, several affordable housing provisions stemming from those offered by Reps. Kennedy and Barney Frank were included in the law. For example, residential properties held by the RTC as conservator were made eligible for the RTC's affordable housing program. Essentially Democrats had gotten management reform and provisions on social issues (but not as much or as many as they wanted), and the administration had gotten four months of continued RTC operations. Republicans apparently also received assurances that an economic stimulus package with tax cuts included would be considered in the next session.[70] The limited funding provision, however, meant that Congress would again be faced with requests for further funding in an election year—and the experience of 1990 did not suggest passage of that funding would be easily accomplished.

Legislative Stalemate II: 1992

Having passed RTC legislation in November, Congress would need to return to the subject almost immediately. The April 1 deadline meant that the RTC had not really been provided with $25 billion, for the agency was able to resolve only a limited number of institutions per quarter and could not use the entire sum by that date. Indeed, Treasury Secretary Brady noted that the RTC would be able to spend only about 40 percent of the money by the deadline.[71]

The debate over the RTC in early 1992 was not unlike the debate that had gone on since the RTC's inception: taking their familiar places were concerns about asset-disposition methods and their effects, the effectiveness of the RTC's management, and, of course, the growing cost of the cleanup. Certain facts on the ground, however,

[68] It is unclear why this did not occur. The increase was unnecessary because, given the effect of the $18.8 billion loophole, the RTC was not close to the limit set by the note cap formula in FIRREA (this limitation worked out to be $125 billion). The administration might have been suggesting the $160 billion figure because some congressional Democrats were trying to rewrite the note cap formula, but with no such language in the last-minute compromise bill, probably no one saw any need to retain the working capital increase.

[69] Most of these proposals had been introduced by Kweise Mfume and then somewhat diluted by amendments offered by Wylie. Another encouragement to make branch operations available to MWOBs was that institutions that donated branches, or provided them on favorable terms, to MWOBs would receive Community Reinvestment Act credit for this action.

[70] *Wall Street Journal* (November 29, 1991). Some Republican members had introduced a bill appending the RTC funding and structural changes to a previous bill that would have cut the capital gains tax rate and made other tax changes. This tying together of RTC financing and tax cuts appears to have been aimed at least partly at the administration, since Democrats supported neither of the tax initiatives. See H.R. 3798.

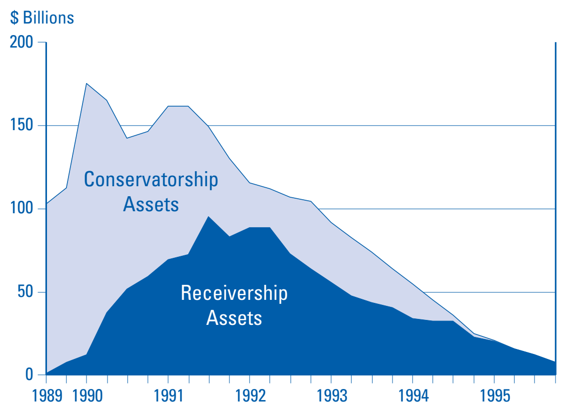
[71] Barbara A. Rehm, "Brady Faults RTC Deadline," *American Banker* (January 9, 1992). In fact, the RTC actually used only $6.7 billion by the deadline (RTC, *Statistical Abstract: August 1989/September 1995* [1995], 4).

were changed, some points of contention were new, and the political dynamic was somewhat different. Although no one in Congress was happy about appropriating funds for the RTC, the new political dynamic probably contributed most to the legislature's inability to pass to a bill to provide new loss funds in 1992.

Some of the changed circumstances were, at least on the surface, positive. The RTC's CEO, Albert Casey, had confirmation hearings in January, had been well received, and was confirmed unanimously in February. The creation of the position itself, along with Casey's promises to streamline the management process by delegating significant authority to RTC field managers, at least indicated that perceived problems connected with the RTC's way of doing business were to be addressed.[72] As Congress was considering the new RTC funding bill in March, Casey announced that the RTC was nearing the completion of its task and would begin to close offices and shed employees, with plans to halve its field staff by the end of 1993. Although some Democrats viewed this as an election-year political maneuver, the RTC had actually made significant progress.[73] By year-end 1991 it had taken over 675 institutions and resolved 584 of them. Total assets held by the RTC, though still high at $130.4 billion, had declined by about $30 billion during 1991 even while more than 120 institutions had been taken into conservatorship.[74] (See figure 1.) Moreover, in response to the recession (which had ended "officially" in March 1991),[75] the Federal Reserve Board had been steadily lowering interest rates (between January 1991 and January 1992 the fed funds rate dropped from 6.91 percent to 4.03 percent).[76] The drop was helpful to troubled thrifts and to the RTC because it meant that those thrifts that the RTC would be taking over would be in less dire condition, and others that might have had to be taken over were likely to survive.[77]

Figure 1

Assets Under RTC Management, 1989–1995



Sources: RTC, *Statistical Abstract* (1995), 29-31 and Thrift Depositor Protection Oversight Board and RTC, *Annual Report* (1996), Part II, 4.

Other developments were less auspicious, at least with regard to how Congress would view requests for further funding. The GAO criticized the RTC's ability to keep track of assets and oversee its contractors, and issued a number of reports that, while citing improvements in the RTC's operations, nevertheless suggested that problems remained. Indeed, the GAO recommended that Congress not grant the administration's funding request in full but keep the RTC on an annual funding schedule as a way to ensure

[72] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Nomination of Albert V. Casey* (January 22, 1992), 16.

[73] Susan Schmidt, "RTC to Cut Work Force by Half, 'Phase Down' Operations," *Washington Post* (March 24, 1992). The RTC's workforce did begin to shrink in 1992. Peak RTC employment was in April 1992, when the agency had 7,391 field staff. By year-end 1993, field staff had declined not by half but by a third, to 4,942. During the same period, the total number of RTC employees fell from 8,624 to 6,499 (RTC, CEO Management Information [January 1994]).

[74] *RTC Statistical Abstract.* Indeed, by the time Congress was voting on RTC funding at the end of the first quarter, the agency had taken over 711 institutions and resolved 640 of them.

[75] http://www.nber.org/March91.html.

[76] By the end of 1992 the fed funds rate would drop to about 3 percent, where it would remain until the beginning of 1994. http://www.federalreserve.gov/releases/h15/data/Monthly/H15_FF_O.txt.

[77] This was already reflected in thrift profitability during 1991: in that year, for the first time since 1985, the industry as a whole was profitable in every quarter (OTS Press Release 92-97 [March 10, 1992]). During 1992, improvement can also be seen in the OTS's ratings of thrifts: As of January 31, 1992, the OTS placed 62 thrifts in Group IV (it was assumed these would be taken over by the RTC), an additional 44 in Group IIIc ("probable" RTC candidates), another 106 in Group IIIb (reasonably possible RTC candidates), and a further 231 in Group IIIa (weak and poorly capitalized, but less likely to require RTC takeover) (RTC, "CEO Management Information" [February 18, 1992]). By December1992, Group IV had shrunk from 62 to just 19, Group IIIc from 44 to 42, and Group IIIb from 106 to just 26 institutions (and the number in Group IIIa had risen from 231 to 251 thrifts). The total size of the bottom three categories had dropped from 212 to only 87 (RTC, "CEO Management Information" [December 31, 1992]).

accountability.[78] And one particular example of RTC mismanagement in contractor oversight came to the fore just as Congress began to consider new funding. In the wake of 1990's Operation Clean Sweep, the RTC's swift resolution of more than a hundred thrifts (many with very poor bookkeeping records), there was a discrepancy of nearly $7 billion in assets between the ledger maintained at the RTC and the ledgers in 92 different receiverships. The RTC's response to this was "Western Storm," a large contract issued to obtain an accurate accounting of assets. The $24 million contract, however, had numerous problems. The GAO charged that the RTC's western-region officials improperly issued the contract without competition, then wrote it without proper budget and cost limits, and circumvented the agency's own rules on allowable maximum contract amounts that could be awarded without approval from Washington by breaking the contract up into more than 90 task orders.[79] Such missteps were hardly helpful to an already flawed image.

In addition, a suggested policy change was particularly important to the debate on funding in early 1992—a push, spearheaded by Rep. Bill McCollum, to use RTC funds to buy back supervisory goodwill from troubled thrifts.[80] FIRREA had created stricter capital requirements for thrifts; among these stricter requirements, the inclusion of supervisory goodwill was to be phased out by 1995.[81] McCollum believed that many institutions, if only they were spared this difficulty, would survive rather than require RTC takeover and so would save considerable taxpayer funds. Many in Congress—particularly fellow Republican James Leach and Democrat Bruce Vento—opposed this as a return to forbearance. Interestingly, just as McCollum was pushing for this legislative change, the legal ramifications of FIRREA's goodwill provisions were beginning to become apparent. In February, a U.S. Claims Court issued a preliminary ruling against the government in *Winstar v. U.S.* This litigation eventually reached the Supreme Court, and led to a 1996 ruling that the government in FIRREA had had no right to repudiate the accounting variances that had been included in resolution contracts. As a result, a number of institutions successfully sued the government for damages. As of this writing, the overall cost of the goodwill litigation since 1997 has reached approximately $1.4 billion (just under $1 billion has been paid in settlements with plaintiffs; the remainder has gone toward litigation costs). Whatever the merits of using RTC funds to buy back goodwill, McCollum's suggested change provided another focus for Republicans who, for a variety of reasons, had disliked the RTC. His proposal helped create an environment in which significant numbers of House Republicans felt willing to reject the position of their own administration. Their stance was undoubtedly fueled, as well, by ongoing antipathy toward various aspects of the RTC's activities, a general disdain for bureaucracy, and the imminence of an election.

The legislative process started with identical bills in each house, introduced at the administration's request, that simply removed the April 1, 1992, deadline on funds provided in RTCRRIA and gave the RTC an additional $55 billion in loss funds. These were the amounts asked for by both Casey and Brady in congressional testimony. Unsurprisingly, many members of both houses had proposals for amendments. In the House it quickly became

[78] See U.S. House Committee on Banking, Finance and Urban Affairs, Subcommittee on Financial Institutions Supervision, Regulation and Insurance, *Resolution Trust Corporation Funding Act of 1992* (February 26, 1992), 7-8, 54ff. See also Stephen Labaton, "Congress Advised to Limit Bailout Funds," *New York Times* (February 26, 1992).

[79] Stephen Labaton, "Congress Advised to Limit Bailout Funds," *New York Times* (February 26, 1992); and U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Nomination of Albert V. Casey* (January 22, 1992), 3, 17. For an extended discussion, see U.S. House Committee on Banking, Finance and Urban Affairs, Subcommittee on General Oversight and Investigations, *The RTC's Operation Western Storm* (August 6, 1992).

[80] McCollum was vice chair of the House Republican Conference; thus, he was more consequential than just a "backbencher."

[81] Earlier in the 1980s, faced with growing numbers of insolvent thrifts but without any means of paying for their closure, the government encouraged mergers as a way to deal with this intractable problem. To make such transactions viable for acquiring institutions, the government allowed the acquirers (for the purposes of meeting capital requirements) to offset the liabilities they were assuming with a counterbalancing paper asset called supervisory goodwill. Acquirers were allowed as much as 40 years to write off supervisory goodwill. In addition, other variances from generally accepted accounting principles (GAAP) were allowed for all thrifts. FIRREA's provision therefore had serious negative implications for many acquirers' net worth, even their solvency, and led to extensive litigation.. See Davison, "Policy and Politics (2005), 18, n.2.

clear that the GAO's recommendation to provide only sufficient funds for another year, until April 1993, had strong support. Casey informed Rep. Annunzio that removal of the April 1 deadline on use of the previously authorized funding, plus an additional $25 billion, would be sufficient.[82] This level of funding, offered as an amendment by Rep. Joseph Kennedy, seems to have been embraced without much dissension, and it passed the subcommittee on a voice vote.[83]

Of course, there were some in the House who thought more needed to be done to reform the RTC or to accomplish other goals. Vento, for example, wanted increased reporting and analysis of assets on hand and sold, as well as a restoration of the borrowing limitation originally present under FIRREA. Bacchus wanted to condition RTC funding on the receipt by Congress of the GAO audit for fiscal year 1991; he also wanted to institute limits on legal fees. The RTC opposed all of these. McCollum offered his supervisory goodwill amendment, as well as an amendment on capital forbearance for thrifts. The RTC took no position on the desirability of these two proposals but thought that RTC funds should not be used for, or tied to, either proposal.[84] Democratic Rep. William Orton put forward an amendment containing a whole series of RTC reform initiatives. In the end, all of these amendments and others were withdrawn because any amendment not specifically having to do with funding was ruled nongermane by Annunzio. This approach had been taken "to avoid the usual bottlenecks over controversial restructuring amendments that have delayed the funding process in the past" and also to give Casey at least some time running the agency without "constant Congressional micromanagement." It was noted that many members, tired of the RTC issue, had willingly withdrawn their amendments.[85]

When the full House Banking Committee considered the bill, many of the same amendments reappeared, but Gonzalez took a similarly hard line, stating that both committee Democrats and the House leadership of both parties wanted to pass a clean bill. Gonzalez himself wanted to offer reform proposals but said he would refrain from doing so. McCollum, who again wanted to put forward his goodwill amendment, was displeased at his inability to do so. Nonetheless, the bill passed the committee easily, 30-17.[86]

The Senate Banking Committee, however, did not follow the clean-bill path. The Senate funding provision was identical to that adopted in the House, but in addition, the Senate bill (S.2482) contained a number of other elements. These included repeal of RTCRRIA's capital forbearance for certain types of loans; an extension of the time allowed for certain thrifts to divest a particular sort of FIRREA-grandfathered real estate investment; an extension of the statute of limitations (from three to five years) for suits against insiders at failed thrifts and banks; the publication of examination reports of failed banks and thrifts if taxpayer funds had been used in the resolution of these institutions (a measure opposed by all the regulators); and a provision to provide health care to employees of failed institutions for a certain period after failure. The only initial provision that related directly to the RTC was one that provided for the designation of an acting RTC CEO if the office became vacant.[87] The committee winnowed the 52 amendments scheduled to be offered, debated only some, and adopted even fewer. Garn's attempt to strip the bill down to a clean funding bill failed 10-11. Successful amendments included one (from Sen. Connie Mack) to add Florida to the RTC's distressed areas and one (from Sen. Terry Sanford) to set aside $1.85 billion for open-

[82] Albert Casey to Rep. Frank Annunzio (February 26, 1992) (RTC MSS LEGH 68, Folder on H.R. 4121 Subcommittee Markup).

[83] Other approaches were proposed. Reps. Barnard and Hoagland offered an amendment that would have lifted the April 1 deadline and provided whatever funding was deemed necessary through April 1, 1994. Gerald Kleczka offered an amendment that was fairly close to the administration's position, differing only in that it forced the president to request the sums as needed. The first was defeated, the second withdrawn. See list of amendments, RTC MSS LEGH 68, Folder on H.R. 4121 Subcommittee Markup.

[84] Casey to Annunzio (February 26, 1992).

[85] *BNA's Banking Report* 58 (March 2, 1992), 355.

[86] Ibid. (March 16, 1992), 459.

[87] Ibid. (March 30, 1992), 552.

thrift assistance.[88] The latter likely would have proved contentious, for it potentially could have aided thrift shareholders as opposed to depositors (this provision was clearly similar in intent to McCollum's).[89] In addition, Sanford proposed it at about the same time that regulators were considering the use of an early resolution program that suggested open-thrift assistance.[90]

The floor debate in the Senate took place just a week before the April 1 deadline, with some members, such as Kent Conrad and Robert Kerrey, indicating they opposed the bill because of their dissatisfaction with the effectiveness of RTC operations and the agency's (lack of) accountability. John Kerry attempted to resurrect an amendment that had been defeated in committee that would have required RTC funding to be treated as spending for purposes of budget enforcement. This measure was an attempt to force the use of either budget cuts or new taxes to offset the RTC spending. With strong Democratic support but the opposition of the Democratic leadership, the amendment failed.[91] In the end, perhaps the most persuasive argument was the simplest—the government had to fulfill its promise to insured depositors—and the bill passed, though not resoundingly, 52-42.[92] Both Democrats and Republicans had similar voting splits: it was not all that surprising that 25 out of 54 Democrats went against the bill, but the opposition of 17 out of 40 Republicans suggested that Republican antipathy to RTC funding was not confined to the House.[93]

On the same day, Gonzalez informed Speaker Foley that Republican support in the House for funding continued to decrease and that without it, passage of the bill would be difficult.[94] As the April 1 deadline approached, what would happen remained unclear. Democrats said they would not support funding unless a majority of Republicans did as well, and many (reportedly about two-thirds) of the Republicans, ambivalent about voting for more funds, were lining up with McCollum, who was supported by minority whip Gingrich.[95] As a result of this impasse, the bill that had passed the House Banking Committee was shelved and a very narrow substitute (H.R. 4707) was introduced in its place. This bill simply removed the April 1 deadline, allowing the RTC to use the funds that had been appropriated in November. By now, however, the legislative process had significantly deteriorated. The substitute bill had been introduced under a very narrow rule that permitted no alterations, little debate, and only a single motion to send the bill back to committee. Republicans, complaining about overbearing tactics, tried unsuccessfully both to defeat the rule and to recommit the bill. When the measure itself came up for a vote, it failed 125-298 because when Democrats saw that Republicans would not support even this limited bill, they too voted against

[88] A summary of the bill as it came out of committee can be found in *Congressional Record* (March 25, 1992), S4204ff. Sanford originally sought $2.7 billion in open-assistance funds, saying that regulators had a "liquidation mentality" and that some weak institutions deserved a chance to recover (Bill Atkinson, Senate Banking Panel Backs $25 billion in RTC Funding; Committee Rejects New-Powers Amendments," *American Banker* [March 25, 1992]).

[89] See Kenneth H. Bacon, "Legislators Debate Bill Funding S&Ls That Includes Weak, but Solvent Thrifts," *Wall Street Journal* (March 30, 1992).

[90] Another amendment offered by Sanford (this one failed) would have prohibited the OTS from naming the RTC as conservator or receiver until the OTS had determined that such a course was more cost-effective than provision of open assistance. The RTC opposed this as potentially inconsistent with the current statutory least-cost test (RTC MSS, LEGH 68, Folder on S.2482 Senate Markup). On March 25, 1992, the Thrift Depositor Protection Oversight Board heard testimony on the use of a program for early resolutions/assisted mergers (ER/AM), which was supported by OTS Director Ryan. Although use of this program was promoted as a way to reduce taxpayer cost through early intervention, those who opposed it felt it harked back to the discredited FSLIC policies of the 1980s. By late April the Oversight Board decided to postpone any decision to use the program, at least partly because there was still hope that Congress would pass a new funding bill and ER/AM might be used as a reason by some in Congress to vote against such a bill.

[91] *Congressional Record* (March 25, 1992), S4341–42. The vote on a point of order under the budget act was 45-48 against the amendment. Forty-two of 53 Democrats voting supported Kerry's amendment; Republicans were almost united in their opposition, voting 3-37 against it.
See vote 00057, http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_102_2.htm.

[92] The parties had similar splits in their voting, with Democrats voting 29-25 to support the bill, and Republicans voting 23-17 (*Congressional Record* [March 25, 1992], S4353). The bill as passed can be found in the *Record* after the vote. It was identical to the one passed in committee, but with the addition of a set of managers' amendments presented by Riegle and Garn. These were uncontroversial; many of them related to financial institutions but were not specifically relevant to the RTC. See ibid., S4349ff.

[93] See vote 00057, http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_102_2.htm

[94] Bill Atkinson, "Senate Banking Panel Backs $25 billion in RTC Funding; Committee Rejects New-Powers Amendments," *American Banker* (March 25, 1992).

[95] Keith Bradsher, "House S&L Proposal Has No New Financing," *New York Times* (April 1, 1992).

it.[96] The RTC was out of money. (Actually, it wasn't quite out of money: the agency had set aside over $2 billion from previous appropriations that had not expired on April 1, but this would not be generally known until later that month.)[97]

In the immediate aftermath of the failed legislation, it appeared that another attempt might be made to pass a bill. The administration said it was open to any reasonable funding plan, and although Gonzalez wanted the administration to push harder in support of RTC funding, he indicated that he would try to pass a bill as soon as possible after the House Easter recess.[98] And indeed, Gonzalez decided to try to resurrect a modified version of the clean bill that had removed the April 1 deadline and provided additional funding (the main change being to provide only an additional $25 billion for use through April 1993) by having a hearing on the bill in the Rules Committee. Moreover, Gonzalez asked for either an open rule or the consideration of amendments at the hearing; either course would allow McCollum to bring up his goodwill buyback plan (and would, of course, allow others to put forward changes as well) and so would permit debate and a vote. It was thought possible such a course might assuage the rancor that had attended House proceedings thus far, and McCollum said he thought many Republicans would favor a funding bill with his plan attached. Rules Committee staff, however, said they could not predict when such a hearing would be held or when floor action on the bill might occur.[99]

There appears, however, to have been little appetite for returning to the issue of RTC funding.[100] In July, President Bush wrote Speaker Foley asking the House to pass additional funding. Gonzalez noted that the bill was with the Rules Committee and that further action on it depended on the leadership.[101] Casey had announced in May that because of the favorable interest-rate environment, the total estimated cost of the cleanup had dropped by $30 billion and that the amount provided in the Senate bill would end the RTC's requests for funding. At the same time, OTS Director John Ryan stated that the number of thrifts likely to fail had dropped significantly as well. These optimistic pronouncements were attacked by some as little more than election-year propaganda. Robert Reischauer, head of the CBO, said his office believed 600–700 additional thrifts would fail and that the low interest-rate environment would be short-lived.[102] He reiterated this in July and suggested that the RTC be kept open for three years beyond its planned closure.[103] His predictions turned out to be far too pessimistic, whereas Casey's and Ryan's came very much closer to being accurate.

[96] *Congressional Record* (April 1, 1992), H2208-29. For the vote, see http://clerk.house.gov/evs/1992/roll069.xml.

[97] See, for example, Stephen Labaton, "Bailout Agency Squirrels Away over $2 Billion," *New York Times* (April 26, 1992). Although there was clearly nothing improper in what the RTC had done, some members of Congress were angered by the disclosure, for RTC officials had maintained that the agency would be out of funds without a new appropriation. The RTC said the amount was not large; it had been held for a specific expected S&L sale and for emergencies in the event of a depositor run at a thrift in conservatorship (Susan Schmidt, "RTC Admits to $2 Billion in Its Coffers; Funds Not 'Secret,'" *Washington Post* [April 28, 1992]).

[98] On April 3, Gonzalez introduced a bill on his own (H.R. 4765) that removed the April 1 deadline, provided an additional $25 billion, and included some of the Senate provisions as well as provisions for some RTC reforms (concerning contracting). It also had a mechanism for a special assessment on SAIF institutions to provide RTC funding, a policy that would have generated considerable controversy. Such an approach to funding was unlikely to go far, and no action was taken on the bill after its introduction. See "Bill Proposes to Aid Bailout by Tapping Healthy S&Ls," *New York Times* (April 4, 1992).

[99] See *BNA's Banking Report* 58: May 4, 1992, p.781, and May 11, 1992, pp.829, 834-35. A number of RTC-related bills were introduced following the failure to provide funds. In April, Rep. Bill Jontz introduced an RTC reform bill (H.R. 4924) that sought to deal with the effect of the RTC on real estate markets, encourage the preservation of environmentally sensitive land, provide for the publication of examination reports of failed institutions, extend the statute of limitation on tort actions, and turn the RTC into a wholly owned government corporation. It provided for funding by the creation of citizen restitution bonds. In July, three bills were introduced. Leach's (H.R. 5629) extended the statute of limitations on RTC tort actions from three years to five. Alex McMillan and Wylie's (H.R. 5544)—in an attempt to allow the RTC to continue its resolutions—prohibited the RTC from refraining to close an institution because of lack of funds and authorized the agency to issue notes to insured depositors in lieu of cash. McCollum's (H.R. 5603) removed the April 1 deadline, provided $25 billion in funding, and, not surprisingly, included its author's supervisory goodwill buyback plan. None of these bills went anywhere.

[100] In June it was reported that despite negotiations between McCollum and Democrats, there appeared no room for compromise and if action were not taken within six weeks, the issue of RTC funding would likely be postponed until after the election (*BNA's Banking Report* 58 [June 1, 1992], 955-56).

[101] U.S. House Committee on Banking, Finance and Urban Affairs, *Semiannual Appearance of the Thrift Depositor Protection Board* (July 29, 1992), 4-6.

[102] Susan Schmidt, "Rosy Forecasts about Cleanup of S&Ls Come under Attack," *Washington Post* (May 18, 1992).

[103] Joel Glenn Brenner, "CBO Chief: Thrift Crisis Isn't Over; Reischauer Says 700 More S&Ls May Fail," *Washington Post* (June 18, 1992).

In the existing climate, however, many in Congress were unwilling to trust claims suggesting that the job was nearly complete and that a single appropriation would suffice. Although during the late summer and early autumn Casey occasionally called for Congress to provide funds, nothing further was done. The RTC continued to take over thrifts, but by the third quarter of 1992 RTC resolution activity slowed almost to a halt. This situation persisted until the latter part of 1993, when the RTC finally received new loss funds.

The failure to provide funding in 1992 had been caused by a confluence of factors. Dissatisfaction with the RTC's operations—whether its methods of asset disposition, its contracting oversight, or its provision of affordable housing—was certainly present and provided reasons for legislators to oppose funding, or at least funding without operational changes. But what happened in 1992 stemmed also from politics—the politics of an election year, the politics of congressional Republican disaffection with administration policy, and the politics of a Democratic majority unwilling to pass unpopular legislation without Republican support.

The RTC Completion Act of 1993

As Congress returned in 1993, the need for RTC funding remained unchanged, as did congressional reluctance to provide that funding. Also unchanged were the concerns of many in Congress about RTC management and operations. And no debate over an RTC bill would have been complete without a scandal or two: this time Western Storm was replaced by a contract with Price Waterhouse that resulted in spectacular photocopying costs. The circumstances surrounding the debate, however, differed in three significant ways: the amount of money thought to be needed was much smaller, the amount of time remaining to the RTC was much shorter, and control of the White House had shifted from the Republican party to the Democratic party.

First, the continued improvement in the economy and the very favorable interest-rate environment meant that the number of likely failures kept diminishing and therefore the additional cost of the cleanup was expected to be lower than had been estimated even six months earlier. Second, time was running out on the RTC, which (according to RTCRRIA) would have to stop taking over failed thrifts on September 30, although it could continue to resolve the institutions it had already taken over and could continue to sell assets until its scheduled closure at the end of 1996. Accordingly, Congress needed to begin grappling with the RTC's shutdown. The September deadline focused attention on the Savings Association Insurance Fund (SAIF), which (under the FDIC's direction) would soon be responsible for taking over and then resolving failed thrifts—but to be in a position to do this it, too, would likely require appropriations. In the event, debate over the SAIF had implications for the RTC and proved an obstacle to passage of RTC legislation.

Finally, with the election of Bill Clinton, the political dynamic had shifted: a Democratic president was asking members of his own majority party to approve RTC funding. This put many congressional Democrats in a difficult position. Although the Democratic leadership had supported funding during the previous administration and many of the rank and file had voted for it, many had also been harsh critics of the RTC for three years and now found it hard to make an about-face. In addition, a great many freshman Democrats were unhappy about voting money for the RTC after having often criticized the agency during the 1992 election campaign. They viewed the need for funding as an unwelcome inheritance. On the other side of the aisle, many congressional Republicans were no great champions of the RTC, had spurned funding in 1992, and were even less likely to support funding now that a Democratic administration was seeking it.

The year 1993 therefore witnessed yet another long legislative struggle, with substantial changes made to what started out—in the familiar way—as an attempt at a "clean bill." This time, though, legislation was enacted. It was the last major RTC statute and would end the RTC's funding needs, make some preparations for the agency's closure, and shut down the agency a year early. And true to form, in this legislation, too, Congress would have a final say about how the RTC did business—in the realms of accountability, management methods, and social policy, the same realms on which Congress had legislated in FIRREA and Congress had discussed in all previous debates surrounding the RTC.

In the early months of 1993, even before a funding request reached Congress, a question that needed to be answered was what the presence of a new administration would mean for the RTC and the legislative process. Before the new administration took office, Lloyd Bentsen had signaled that, as Treasury Secretary, he would try to obtain RTC funding quickly.[104] Two issues, however, made obtaining funding more difficult. The first concerned the RTC's problems with a 1992 Price Waterhouse contract to determine the value of assets in preparation for the resolution and sale of assets at the failed HomeFed Bank in San Diego, California. Under the contract, the RTC was charged 67 cents per page to copy 11 million documents. The RTC managers supervising this contract did not question either why so many documents were copied or why the cost per page was such a seemingly excessive amount. This copying helped increase the initial contract costs from $5 million to approximately $25 million. Casey tried to defend at least some of the costs (although he admitted with hindsight that the contract ought to have been renegotiated once the need for so much copying was discovered), but the RTC's inspector general was highly critical of the contract. The episode served to expose some of the RTC's systemic problems in awarding and managing contracts, foremost among which were insufficient oversight by senior management and inadequate internal controls—and it provided new ammunition for RTC critics.[105] The second issue that came to light in February was the disclosure that many top RTC officials had received bonuses totaling more than $1 million for 1992. Many RTC executives' salaries were already higher than government salaries in general, and although Casey defended the bonuses, they drew congressional criticism as extravagant.[106]

These revelations did not help make a case for funding the RTC, and it was soon after they came to light that Bentsen appeared before Congress asking for $28 billion for the RTC and another $17 billion for the SAIF.[107] The timing of the request was not propitious, and not only because of the two particular revelations. Many inside and outside Congress remained unhappy with the RTC's performance. Some developers and some in Congress thought the RTC's practice of selling assets in bulk meant that small investors were being denied the opportunity to bid on assets. (Partly in response, the RTC in April would announce the use of smaller asset pools.)[108] Some in Congress were concerned about reports that the RTC's use of MWOBs had been lackluster.[109]

[104] Robert M. Garsson, "Bentsen to Press for RTC Funding," *American Banker* (January 13, 1993).

[105] Unbeknownst to RTC management, the documents were being copied in response to a Justice Department subpoena for all of HomeFed's documents. In February 1993, the RTC renegotiated the contract with Price Waterhouse (PW). Although not legally required to do so, PW voluntarily agreed to a fee reduction of about 20 percent for any billings over $5 million–a reduction that ultimately resulted in a savings to the RTC of over $4 million. This discussion is based on S. Duran Field, The RTC'S Contracting for Asset Management and Disposition, unpublished FDIC paper (2003). See also U.S. Senate Committee on Governmental Affairs, Subcommittee on Regulation and Government Information, *Contracting Problems* (February 19, 1993).

[106] Susan Schmidt, "RTC Paid 136 Top Officials More Than $1 Million in Bonuses in '92," *Washington Post* (February 24, 1993). The contracting problems and bonuses made Casey's desire to remain at the RTC difficult to achieve, apart from his having been appointed by the previous Republican administration. It soon became clear that the new administration wanted him to leave, and in February he announced his resignation. He left on March 15. Deputy Treasury Secretary Roger Altman was named interim CEO (*BNA's Banking Report* 60 [March 15]: 347). Later in 1993 the administration nominated Stanley Tate to replace Altman, but when the Senate delayed in acting on his nomination, Tate angrily withdrew before the end of 1993. See Albert R. Karr, "Tate Withdraws as Nominee to Head RTC, Criticizes Sen. Riegle for Inaction" (*Wall Street Journal* [December 1, 1993]). John Ryan eventually held the post of acting CEO during 1994 and 1995.

[107] See U.S. House Committee on Banking, Finance and Urban Affairs, *Semiannual Appearance of the Thrift Depositor Protection Oversight Board* (March 16, 1993), 9ff.; and U.S. Senate Committee on Banking, Housing and Urban Affairs, *Hearing on the Semiannual Report* (March 17, 1993), 51–52. This total of $45 billion was about $5 billion less than the CBO was then estimating for the likely cost. See U.S. House Committee on Banking, Housing and Urban Affairs, Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, *Funding Needs* (March 17 and 18, 1993).

[108] *BNA's Banking Report* 60 (April 12, 1993), 509. The policy changes significantly lowered the RTC's asset sales goals for 1993: instead of $70 billion in book value sales and principal collections, the RTC (as of June) set a goal of $56 billion (RTC Department of Planning and Analysis, Briefing Book Overview [July 1993], 24).

[109] See, for example, Richard B. Schmitt, "RTC Lags Behind in Effort to Give Out Legal Work to Minorities and Women," *Wall Street Journal* (March 23, 1993). See also U.S. House Committee on Banking, Finance and Urban Affairs, Subcommittee on General Oversight, Investigations, and the Resolution of Failed Financial Institutions, *Professional Liability* (March 30, 1993).

General worries about contract oversight persisted. To deal with these and other concerns, Bentsen promised a series of management reforms in the hope that Congress would refrain from further statutory management requirements.[110]

The Senate Banking Committee acted quickly to approve the $45 billion funding request, despite the misgivings of newly elected members. Their hesitancy did engender an amendment designed to ensure that the management reforms promised by Bentsen would have been successfully implemented. Among other things, this amendment provided that Bentsen certify that the reforms were working at the point when the RTC had expended more than $10 billion of the appropriated funding, and again at the $20 billion point. However, senators of both parties said that the amendment was too weak and they would propose tougher safeguards later.[111]

Despite hopes for a relatively quick process in the House, the legislation languished long enough for the administration to be able, in late April, to decrease by $3 billion the amount of funds it sought.[112] In May, when the House banking subcommittee finally approved a bill, with newcomers to the House leery of voting for RTC funding, the amount for the RTC's funding was cut to $18.3 billion (the share of the $25 billion in RTCRRIA funds that was not used by the April 1992 deadline); SAIF funding was also cut. Members took refuge in releasing the unused funds that had been appropriated in 1991, thereby making it possible to say that they had not voted any new RTC funds at all. The decrease in amount, irrespective of the motives behind it, made sense: the GAO now estimated that the RTC would likely need between $12 and $17 billion and possibly as little as $7 billion. The House bill also ended the RTC's existence a year early, at year-end 1995, and added a number of management reforms, some limitations on bonuses and compensation to RTC employees, and provisions dealing with MWOBs.[113]

The full House Banking Committee quickly passed the bill. It removed the April 1, 1992, deadline from RTCRRIA, thus providing $18.3 billion to the RTC, and adopted the certification requirements contained in the Senate bill. It also authorized $16 billion for the SAIF (but required certifications from the Treasury Secretary for its use) to be used as loss funding through 1998 or until the SAIF met its designated reserve ratio of 1.25 percent. In addition, the House committee's bill included a host of RTC management reforms, including requiring the RTC to maintain a business plan and create the position of chief financial officer; created a new audit committee at the Thrift Depositor Protection Oversight Board; and mandated new contracting oversight procedures. The bill had a series of provisions related to helping MWOBs, both as bidders on assets and as contractors, but these provisions were weaker than those in the subcommittee version. The bill also included a response to complaints about small investors not being able to bid on RTC assets, and a response to perceived problems in the prosecution of thrift officials who had caused losses at institutions. The latter response included an extension of the statute of limitations on cases against such individuals—a provision that complicated the legislative process because the House Judiciary Committee would have to consider it before passage. The House bill also placed limits on RTC compensation and bonuses. Finally, the bill established an FDIC-RTC transition task force to plan for the agency's shutdown and the takeover of its functions by the FDIC, and moved up the date of that closure by a year, to year-end 1995.[114]

Just after the House Banking Committee passed the bill, the full Senate comfortably passed its bill, 61-35.[115] The Senate adopted the House's position on RTC funding, providing $18.3 billion.

110 U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on the Semiannual Report* (March 17, 1993), 50–51.

111 Some 19 amendments that had been drafted were not considered in committee but were expected to surface later in the debate. Concerns about the bill were evident from the statements that six Democrats appended to the Senate report. See U.S. Senate Committee on Banking, Housing, and Urban Affairs Thrift Depositor Protection Act of 1993 (April 1, 1993), 17ff.

112 The favorable economy (particularly the benign interest-rate environment) was cited as the reason for the decrease.

113 *BNA's Banking Report* 60 (May 3, 1993), 619.

114 See H.R. 1340.

115 Although Democratic support was stronger than Republican, a solid majority of Senate Republicans supported the bill, with 24 voting for it and only 16 against. The Democratic vote was 37-19.

The Senate also provided $16 billion for the SAIF (although it initially appropriated only $8.5 billion, with the rest authorized if necessary). And the Senate added a series of provisions on management reforms, MWOB contracting, and other issues, essentially duplicating the provisions in the House bill.

In mid-June, when the House Judiciary Committee approved (with some modifications) the extension of the statute of limitations, the RTC bill seemed ready for passage.[116] However, Democratic congressional support for the bill was weak and Republican support almost nonexistent, so the leadership chose to delay the vote. Congress continued to work through the summer to find a way to pass the bill. A major stumbling block was not RTC but SAIF funding:[117] Republicans wanted to provide amounts lower than $16 billion and wanted to be certain that the funds would be used only for losses, not to capitalize the SAIF. Republicans also opposed some of the provisions related to MWOB contracting and wanted to weaken them further. Democrats, of course, wanted them retained. A stalemate similar to that of 1992 appeared very possible.

In September an agreement on funding appeared to have been reached. The RTC funding remained unchanged, but the SAIF funding would be reduced to $8 billion. To take pressure off the SAIF, the RTC would continue resolving failed thrifts for an additional 18 months, until March 31, 1995 (as opposed to September 30, 1993, the date set by RTCRRIA). In addition, the MWOB provisions were adjusted so they would have no effect on the budget, in an effort to mollify Republican opposition. On September 14, the bill was narrowly approved, 214-208, with only 24 Republicans voting in favor. The provisions dealing specifically with the RTC were relatively little changed from those that had passed the committee in May.

As the House and Senate moved toward a conference, negotiations on a final bill continued. The most substantive issues, however, were only tangentially related to the RTC. Now that agreement had been reached on funding for the RTC, on the extension of the period during which the agency would resolve failed thrifts, on its early closure, and on management reforms, the RTC was a problem close to being in the past. Concerns now centered on the deposit insurance funds: how much money to provide to the SAIF and under what conditions, as well as what effect the potential premium differentials between the SAIF and the Bank Insurance Fund would have. Reaching agreement on the SAIF took another month. One last RTC-related hurdle remained. Some Senate Republicans, notably Alphonse D'Amato, opposed the MWOB provisions in the House bill and therefore held up the appointment of Senate conferees. A November compromise on these provisions, one that somewhat weakened the House version, finally cleared the way for passage. On November 20, the Senate voted for the bill 54-45, and two days later the House voted for it 235-191.[118]

The RTC Completion Act appropriated $18.3 billion for the RTC.[119] None of the appropriated funds could benefit thrift shareholders. The first $10 billion was available to the RTC, and the remainder would be available only after certification by the Treasury Secretary that statutory management reforms had been implemented.[120] The required management reforms included the development of a comprehensive business plan for the remainder of the RTC's existence, the creation of a small-investor program, the appointment of a chief financial officer, a strengthening of contract oversight, the creation of a new audit committee, and

[116] For the Judiciary Committee's views, see U.S. House, *Resolution Trust Corporation Completion Act* (June 15, 1993).

[117] Although Republicans did want to reduce RTC funding to $12 billion, this desire does not appear to have been a sticking point.

[118] The Senate vote was reasonably bipartisan, although fewer Republicans supported the bill than had supported it in May. Voting in favor were 19 Republicans and 35 Democrats; voting against were 24 Republicans and 21 Democrats. See vote 00393, http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_103_1.htm. Characteristically, the House vote was more politically divided. Only 27 Republicans joined 208 Democrats in favor of the bill, while 144 Republicans and 46 Democrats voted against it. See http://clerk.house.gov/evs/1993/roll613.xml.

[119] See Public Law 103-204, which was signed into law on December 17, 1993.

[120] Although $8 billion was authorized for the SAIF, no money was appropriated for the deposit insurance fund.

the maintenance of effective information systems and internal controls. The GAO was to evaluate how well the RTC complied with the required reforms. In an effort to allow the RTC to continue to pursue thrift officials who had contributed to the S&L debacle, the statute of limitations on RTC civil lawsuits was extended from three to five years (unless state law permitted a longer period). If the period of the extension had passed, actions could be revived for serious fraud that had resulted in unjust enrichment or substantial loss to an institution. The law also had provisions that limited bonuses and compensation to RTC employees and that included RTC employees and contractors under whistleblower protection laws. Under the statute, the RTC would close down a year early, on December 31, 1995, but to take pressure off the SAIF, the RTC would not cease taking over insolvent institutions until sometime between January 1 and July 1, 1995.[121]

The law also contained a number of "social policy" provisions. One set was designed to increase opportunities for minorities and women, and it required the creation of a division devoted to these programs headed by a vice president who would sit on the RTC's executive committee. The law also required contractors who received large contracts to subcontract with MWOBs unless such subcontractors were unavailable and unless such subcontracting significantly increased costs or impeded performance. In addition to these kinds of provisions, affordable housing programs at both the RTC and the FDIC were expanded.

Lastly, to address the transition that would occur at the end of 1995, the law extended to the FDIC certain regulations and restrictions that had been developed at the RTC. These included regulations on conflicts of interest and ethics, and restrictions on the ability of individuals to buy FDIC-controlled assets if those individuals had contributed, through fraud or other means, to the losses of failed institutions. In addition, an asset-disposition division was to be created at the FDIC. The law also created an FDIC-RTC Transition Task Force to ensure the orderly transfer of systems and personnel to the FDIC.

Conclusion

As was to be expected, congressional oversight of the RTC continued until the agency closed in 1995, but the legislative story ends with passage of the 1993 Completion Act—the last significant legislative activity involving the RTC. At that point the RTC's work was winding down. Although the 1993 law provided $18.3 billion in additional funds, the agency requested only $4.6 billion and did not even use all of that.[122] After the third quarter of 1993 no new thrifts were taken into conservatorship, and, with the new funding that allowed the agency to resolve institutions already in conservatorship, the number of RTC conservatorships dropped from 68 at year-end 1993 to just 2 a year later. The story of asset disposition is comparable: during the period when the RTC had no funding it nonetheless reduced its asset inventory by more than $50 billion, and at year-end 1994 it held just $25 billion in assets. When the agency closed at year-end 1995, only $7.7 billion in assets was left to be transferred to FDIC management. Over its entire lifetime, the RTC disposed of $458.5 billion.[123] Thus, despite all the criticism—some warranted, some not—the RTC accomplished its goals and disappeared a full year earlier than FIRREA had mandated in 1989.[124]

The RTC's relationship with Congress was dominated by two issues: funding and management. The experience with funding clearly demonstrates

[121] In December 1994, Bentsen decided that the date would be June 30, 1995.

[122] When the agency's acting CEO, John Ryan, predicted in May 1994 that the RTC would likely require only $5 billion more, some Republicans sought (but failed) to cut the $18.3 billion appropriation to that amount. Robyn Meredith, "White House Blocks Moves to Trim RTC Funding," *American Banker* (June 13, 1994). The total amount provided to the RTC was $91.3 billion, but at closure it had used only $87.9 billion. Thrift Depositor Protection Oversight Board and Resolution Trust Corporation, *Annual Report . . . for the Calendar Year 1995* (1996), Part I, 44. The final amount "used" by the RTC continued to drop after its closure as the FDIC sold off RTC assets and achieved better-than-expected recovery rates. It turned out that, although it was not apparent in 1993, the RTC needed none of the funding provided by the Completion Act.

[123] Thrift Depositor Protection Oversight Board and Resolution Trust Corporation, *Annual Report . . . for the Calendar Year 1995* (1996), Part I, 44.

[124] This exit, of course, was feasible only because a permanent entity (the FDIC) was available to take over the remaining RTC assets and manage its receiverships.

that for an agency with the functions of the RTC, adequate funding—both for working capital and for losses—is extremely important. A mechanism for raising working capital should probably have been specified in FIRREA, obviating the need for a six-month political debate. As for loss funding, the viewpoints of both those in the executive branch who were seeking funding and those in Congress who opposed it were not hard to understand—primarily because at the beginning and continuing almost until the end, the size of the losses in the thrift industry was a large and moving target. The estimates changed substantially, depending on the date and the source. Appropriating the full amount in 1989 would have been impossible not only politically but also practically. And even after 1989, when the need for more funds was inescapable although the amount was not yet fully known, the disinclination of congressional critics to provide unlimited funds to the RTC was not unreasonable (though politics played as much of a role as did prudence). However, some might describe the House's inability to pass a bill providing funds to the RTC in 1990 and 1992 as at least a temporary abdication of its responsibility to honor the federal government's promise to insured depositors. To be sure, the money was eventually appropriated, but these delays had real costs.[125] Nor would the GAO's suggestion that Congress fund the RTC annually have been likely to help remedy the problem, given the political reality. Earlier adoption of the 1993 approach—authorizing appropriations but requiring certification as funding needs increased—might have made the process easier both for the RTC and for those in Congress who had to vote for funding. However, this approach would not have removed the attendant problems of appropriating such funding at a time of severe deficits or of relieving the RTC of the opprobrium in which it was held. No matter what approach had been taken, finding the political will to fund the RTC during this period would have been difficult.

Congressional unwillingness to provide funding was frequently intertwined with the second element of the legislative environment, the constant scrutiny of RTC management and operations. Critics often claimed that problems at the RTC made it difficult to support additional RTC appropriations. During the first two years, criticism of the RTC's operations was most often seen through the prism of perceived problems in the management structure created by FIRREA—a structure viewed as cumbersome and as preventing the agency from responding to the huge task confronting it.

Certainly conflict between the RTC and the Oversight Board was present, particularly in 1989–1990. Had the structural change enacted at the end of 1991 been in place from the outset, the result might well have been a better functioning agency. But delayed until 1991, the changes were of debatable significance. By then the strife between the RTC and the Oversight Board had substantially lessened; the RTC had resolved more than three-quarters of the thrifts it would take over; and although large amounts of increasingly hard-to-sell assets were still under RTC control, their levels were dropping. Moreover, the new management structure had no effect on the trends in methods of asset disposition; and apart from a new CEO, most of the senior personnel running the agency remained in place. Still, the initial difficulties and the debate over management structure do point to an inherent problem that was perhaps given too little attention when the RTC was created: tension was almost inevitable with the creation of a government corporation designed to have a good deal of autonomy while also using taxpayer dollars.

Aside from the management structure, Congress was constantly reviewing RTC operations and policies. Although politics often intruded into judgments about the agency, congressional oversight was necessary; and although some of the statutory requirements imposed on the RTC could be viewed as micromanagement, they probably

[125] However, the oft-cited figures of so many millions of dollars per day as costs of the delays were probably inaccurate and might have been overstatements, particularly during the funding hiatus of 1992–1993, when conditions in thrifts were markedly better than they had been previously.

contributed to positive changes in RTC operations. Yes, the agency got better at its job for reasons that had nothing to do with Congress: the RTC's managers and personnel gained knowledge about how best to approach the thrift cleanup. Nevertheless, the constant congressional examination, despite possible negative effects, forced the agency to operate in a manner that would withstand scrutiny.

In addition, the social initiatives mandated by FIRREA and subsequent legislation —specifically, contracting out to MWOBs and providing affordable housing—certainly affected the RTC. By the end of the agency's existence, for example, about 35 percent of its contracts had gone to MWOBs. And in response to congressional concerns that most such contracting had been with nonminority women, in 1994 and 1995 the agency greatly increased the proportion of its contracting with minority-owned businesses. In total, however, minority-owned businesses received only about 12 percent of the approximately 160,000 contracts awarded by the agency.[126] Under the RTC's Affordable Housing Disposition Program, the agency sold more than 23,000 single-family properties for a total of $632 million and more than 800 multifamily properties (with more than 80,000 units) for almost $900 million.[127] These totals were clearly only a small fraction of the properties sold by the RTC. Overall, therefore, congressional social policy initiatives were in some measure accomplished, required the RTC to create programs that otherwise would not have existed, and added some costs to the cleanup. But in the context of the RTC's work, the effects on the agency occurred at the margins.

The legislative environment surrounding the RTC was obviously a difficult one. Although the costs generated by insolvent thrifts had already been incurred, there was little appetite to pay them, and the ever-increasing addition of more costs made the legislative process even more problematic. In addition, the RTC provided a convenient target—and there was often much to criticize, although the agency had an immense task and little time to either prepare for or accomplish it. Legislators often noted that they frequently received complaints about the RTC from constituents, and their reluctance to provide additional funding was partly a response to that criticism. Nevertheless, in the end Congress managed to appropriate the funds required and to provide necessary oversight over the process. At the same time, the RTC, sometimes chafing under that oversight and the delays in funding, did what it was intended to do. When the RTC opened for business, some observers predicted that their grandchildren would be buying assets from the agency. Perhaps a measure of the RTC's success is that little more than a decade after it closed, this agency that provoked so much debate is now largely forgotten.

[126] Thrift Depositor Protection Oversight Board and Resolution Trust Corporation, *Annual Report . . . for the Calendar Year 1995* (1996), Part II, 61. Minority-owned businesses did receive almost 17 percent of estimated fees.
[127] Ibid., 47.

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