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October 1994

# FAILED FINANCIAL INSTITUTIONS

## RTC/FDIC Risk Fraud and Mismanagement by Employing Those Deemed Culpable







United States  
General Accounting Office  
Washington, D.C. 20548

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Office of Special Investigations

B-257933

October 3, 1994

The Honorable John Glenn  
Chairman, Committee on Governmental Affairs  
United States Senate

Dear Mr. Chairman:

As you know, GAO identified the cleanup of failed, federally insured savings and loan institutions (thrifts) as 1 of 17 federal program areas that are especially vulnerable to fraud, waste, abuse, and mismanagement. The Resolution Trust Corporation (RTC) now largely controls the cleanup, and the Federal Deposit Insurance Corporation (FDIC) will assume complete control of the cleanup by 1996. This report responds to your concerns as to whether RTC and FDIC (the Corporations) have sufficient systems to assist hiring and management officials in identifying job applicants and current employees for whom the Corporations had made culpability determinations.<sup>1</sup> You were also concerned that the Corporations do not share information about the determinations.

At your request, we limited our investigation to those positions that had disposition responsibilities for the failed institutions' assets (vital positions). We also examined whether sufficient systems exist to inform RTC management of culpable nonfederal employees who hold vital positions in thrifts that are operating in conservatorship under RTC control.

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## Results in Brief

The Corporations are vulnerable to fraud, abuse, or mismanagement because they do not systematically screen employees or applicants to determine if they have been found culpable in the losses that caused institutions to fail. If the Corporations attempted to implement a systematic employment screening process for culpability determinations, all necessary information would not be in their existing databases. For example,

- The Corporations' databases of culpable individuals are not complete in that they do not include the names of all culpable directors and officers of failed institutions. Notably, they do not always include the names of culpable employees if the Corporations have determined that legal action would not be cost-effective.

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<sup>1</sup>Determinations of "culpability" are administrative determinations made by the Corporations based on the Corporations' own belief that sufficient evidence exists to file a professional liability suit or submit a criminal referral to the Department of Justice. These determinations are administrative in nature and may be followed by civil suit or criminal prosecution.

- Social security numbers or other personal identifiers of culpable individuals are often not included in the Corporations' databases, making positive identification difficult.
- RTC's database of professional liability suits against individuals it has determined to be culpable includes the names of individuals against whom no suits have been filed.

The Corporations also have no systematic means for promptly notifying managers and supervisors of employees against whom a culpability determination has been made. Even if notified of such determinations, managers have no clear policy and guidance concerning what action, if any, should be taken regarding those identified.

Further, the Corporations do not systematically share information regarding individuals each has found culpable for institution failures, thus increasing each Corporation's vulnerability.

Thus, during our investigation, the Corporations and we separately identified certain employees of RTC, FDIC, and conservatorship institutions who had previously been determined to be culpable yet who held vital positions. In addition, the Corporations' vulnerability may not be limited to these identified employees because of the systemic problems identified above. For example, RTC does not maintain a database of "non-federal conservatorship employees,"<sup>2</sup> including those who perform asset disposition functions.

In addition, RTC does not subject conservatorship employees to the integrity requirements of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), the basic law that governs RTC, although the law clearly covers them. However, many conservatorship employees perform RTC functions and activities and thus add to RTC's vulnerability.

As a result of these and other shortcomings, the Corporations' vulnerability to fraud, abuse, or mismanagement from culpable individuals in vital positions is significant, given the positions they hold and the value of the assets they control. The Corporations need to address these vulnerability issues to ensure the proper disposition of the failed institutions' assets and to protect insurance funds' and taxpayers' interests. Because RTC is transferring its assets and operations to FDIC by 1996, we are making recommendations to the Corporations to assist them as they prepare for the transition period.

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<sup>2</sup>Employees of the failed institutions, as defined by the RTC Conservatorship Operation Manual.

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## Background

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) established RTC in 1989 to contain, manage, and resolve hundreds of failed thrift institutions. The Federal Deposit Insurance Corporation Improvement Act of 1991 clarified or expanded RTC's and FDIC's responsibilities for resolving failed thrifts and banks. As of April 25, 1994, RTC was responsible for resolving 743 thrifts. From fiscal year 1990 to May 19, 1994, FDIC was responsible for resolving 465 failed banks. Under the RTC Completion Act, RTC is to cease operating by December 31, 1995. After that date, FDIC will become responsible for (1) resolving the thrifts that fail after June 30, 1995, and (2) completing the disposition of thrift assets remaining in RTC's inventory.

When RTC assumes control of an institution, its Office of Investigations and its Legal Division's Professional Liability Section work together. They determine which institution officers and directors, if any, are responsible for, or culpable in, the losses that resulted in the institution's failure. Once these administrative determinations are made, RTC generally then files a professional liability suit or submits a criminal referral naming the culpable individuals. FDIC operates in much the same manner.

Between its inception and June 30, 1994, RTC filed 245 professional liability suits against directors and officers, of which 181 are pending, and made 1,134 criminal referrals to the Department of Justice. FDIC had approximately 400 professional liability suits against directors and officers between January 1990 and July 1994, of which 120 are pending. In addition, FDIC filed 998 criminal referrals in that same period.

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## RTC/FDIC Are Vulnerable

RTC and FDIC are vulnerable to fraud, abuse, and mismanagement because they do not systematically screen job applicants or current employees to determine if they have been found culpable in the losses that caused federally insured institutions to fail. The Corporations have no systems designed to screen prospective employees to determine if the Corporations have found them culpable in the failures. In addition, after the Corporations make culpability determinations, they have no systems to verify whether they or a conservatorship institution currently employ the individuals deemed culpable.

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## Shortcomings of Existing Corporation Databases

The Corporations' databases concerning professional liability suits and criminal referrals are not designed to be used for employment screening and contain a number of shortcomings for performing this function. First, the databases are incomplete: Names of culpable individuals against whom legal action was not cost-effective<sup>3</sup> are not always included in Corporation databases, and criminal referral listings to the Department of Justice are incomplete. Second, configuration of the Corporation databases constrains their usefulness in locating names of culpable individuals. Third, one RTC database incorrectly lists individuals as culpable when they are not. These shortcomings become critical when verifying whether prospective employees for, or current employees in, some vital capacity have been found culpable for institution failures.

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## Corporations' Databases of Culpable Individuals Are Incomplete

The Corporations' databases of culpable individuals are incomplete, continuing to leave them vulnerable to fraud and mismanagement. For example, the Corporations do not always include in their databases the names of those individuals found culpable for institution failures if RTC and FDIC have determined that legal action would not be cost-effective.

In addition, FDIC criminal referral listings are incomplete. After we compared all FDIC criminal referrals filed with Justice for one failed bank with an FDIC listing of all criminal referrals filed in the past 5 years, we found over half missing from the FDIC listing. FDIC had filed criminal referrals against eight individuals from the failed bank between November 1990 and February 1991, yet only three of the names were on its criminal referral listing. As a result, if the Corporations had performed employment screening, they would have been unaware of the culpability of the five not on the listing. FDIC acknowledged that the criminal referral listing, which came from a database not designed for employment screening, is not appropriate for this purpose due to the number of errors it contains.

A similar situation exists with the RTC databases. RTC acknowledged that because each RTC region is responsible for entering its own data, some may not have entered all of the professional liability suit and criminal referral data necessary to make this database an integral part of an accurate screening system. This inconsistent reporting occurs because each region has discretion about how much information is placed in the system.

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<sup>3</sup>The Corporations consider the litigation's cost, the value of the claim, and the potential defendant's ability to pay any resulting judgment before pursuing a professional liability suit.

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**Format/Organization of Databases Make Employment Screening Difficult**

The Corporations' databases lack systematic means to identify culpable individuals, and the organization of FDIC's database of professional liability suits constrains its usefulness. Both situations increase Corporation vulnerability.

None of the Corporations' databases pertaining to professional liability suits or criminal referrals systematically provide social security numbers or other similar identifiers necessary to make a positive identification for similar names. To perform our verification when social security numbers were not available, we requested individuals' home addresses and dates of birth from the Corporations. These were sometimes available only on documents maintained by outside legal counsel.

Further, the organization of FDIC's professional liability suit database, containing over 1,500 individuals' names, is such that it constrains the usefulness of the database for employment screening. It does not have the capability to retrieve defendants by name. Instead, this database, which FDIC officials acknowledged would be difficult to use for employment screening, identifies failed institutions resolved by FDIC, each followed by a list of defendants' names. Therefore, we were unable to determine whether the Corporations employed any of these individuals in vital positions.

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**RTC Professional Liability Suit Listing Incorrectly Included Two Individuals as Defendants**

RTC had never filed suit against two other RTC employees we found on its professional liability suit listing. RTC included these two names on the listing because it routinely enters the names of all directors and officers from a failed institution in the database from which it drew the listing. RTC told us that this database was not designed, nor ever intended to be used, for employment screening.

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**RTC and FDIC Did Not Communicate Culpability Determinations Promptly**

Neither RTC nor FDIC has established a systematic means for communicating determinations of culpability to managers in a timely way. Managers become aware of culpability determinations made against current employees through happenstance. However, early notification would allow managers to evaluate and determine, in a timely manner, whether to restrict the employees' duties and responsibilities or to evaluate their employment status. Such action would help limit the Corporations' vulnerability to fraud, abuse, and mismanagement.

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For example, RTC hired an individual in January 1990 as a credit specialist to manage a conservatorship institution with \$1.9 billion in assets. RTC filed a professional liability suit against him in December 1992. Being unaware of the suit, a senior manager at the regional RTC office offered the employee a new position (and a paid move) 4 days after RTC had filed the professional liability suit. In fact, the manager did not learn of the suit for 11 days after making the offer (15 days after RTC had filed suit). After learning of the suit on December 28, 1992, the manager acted to limit RTC's vulnerability: He restricted the individual from all RTC offices and placed him on a fully paid administrative-leave status for approximately 1 month until his employment was to expire because the local RTC office was closing. Previously, the credit specialist's duties included (1) providing guidance, direction, and control to the institution through the documentation and inventory of assets; (2) directing the sale of owned real estate and loans; and (3) assuming, in the absence of the managing agent in charge of the RTC conservatorship institution, the responsibilities and delegated authorities of the managing agent.

In another instance, RTC filed a professional liability suit against the Vice President for Loan Workout<sup>4</sup> (a conservatorship employee) at an RTC conservatorship institution having over \$200 million in assets. Following the filing of the suit in December 1992, RTC sent a letter to the individual's residence requesting that he resign. RTC did not inform the managing agent in charge of the RTC conservatorship institution where the vice president worked of either the suit or the letter. According to the managing agent, he was unaware that RTC had determined the vice president to be responsible for the failure of an institution until the employee showed him a copy of the RTC letter. The managing agent thus had no opportunity to consider revising the vice president's duties and limiting RTC's vulnerability. A Virginia newspaper published an article about RTC's employment of the vice president. The article, entitled "Thriffs: From One Failure to Another," stated that when RTC filed suit against the individual, it did not have to look far for the defendant as he was working a block away at another failed thrift being managed by RTC.

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<sup>4</sup>The Corporations use "workouts" to develop the planned disposition of assets with regard to their price and purchaser.



## RTC/FDIC Policy Unclear as to What Action to Take Regarding Those Found Culpable

In January 1994, RTC issued a policy covering civil service employees determined to be culpable in the losses of failed institutions. The policy states in part that “Conduct which does not clearly fall into one of [FIRREA’s] prohibited categories<sup>5</sup> is less clear-cut and requires further analysis.” The policy also states, “An example that requires careful consideration is when an RTC employee is named, or about to be named, in a suit filed by the RTC Professional Liability Section.”

While this policy is critical for managers in making employment decisions, it does not describe what “further analysis” is required. Thus, the policy provides neither the direction nor the clear guidance that managers need when deciding (1) to hire an individual previously found culpable for the failure of an institution or (2) what personnel action, if any, should be taken against current employees whom the Corporations have found culpable.

Similarly, FDIC policy does not provide clear guidance for managers to make necessary employment decisions regarding culpability determinations. FDIC standards of ethical conduct, which adhere to those of the executive branch, state only that FDIC employees cannot be indebted to a failed institution through any extension of credit.

## RTC and FDIC Did Not Share Findings of Culpability

Several federal agencies—including RTC and FDIC—coordinate their efforts to pursue claims, prosecutions, and enforcement actions to maximize recoveries at the lowest possible cost. Unfortunately, this effort does not extend to the systematic sharing of information between RTC and FDIC regarding the directors and officers each had found culpable in the failures of federally insured institutions. Responsible officials at RTC and FDIC acknowledged that the Corporations do not customarily share such information. Therefore, they are aware only of those employees against whom their own organization has brought action.

<sup>5</sup>FIRREA requires RTC to ensure that anyone who directly or indirectly performs services for it meets minimum standards of competence, experience, integrity, and fitness. These standards prohibit any person from performing any service for RTC who

- has been convicted of a felony;
- has been removed from or prohibited from participating in the affairs of an insured depository institution pursuant to any final enforcement action by any federal banking agency;
- has demonstrated a practice or pattern of defalcation (misappropriation);
- is currently in default on one or more obligations to FDIC, the Federal Savings and Loan Insurance Corporation, or RTC; or
- has caused a substantial loss to federal deposit insurance funds.

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## RTC/FDIC Employees Found Culpable

After our request, RTC and FDIC identified 12 individuals, one of whom was a conservatorship institution employee, whom the Corporations had previously determined to be culpable and who were holding vital positions in FDIC, RTC, or conservatorship institutions. We identified two additional employees occupying vital positions whom the Corporations had found culpable. These discoveries illustrate the Corporations' vulnerability.

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## RTC/FDIC-Identified Employees Previously Found Culpable

In response to our request for a list of such employees, RTC's Office of Investigations identified three individuals who held vital positions although they had been determined to be culpable. Those individuals had been found responsible for losses and had been made subjects of professional liability suits or criminal referrals to the Department of Justice since 1989. FDIC's investigative office identified nine FDIC employees holding vital positions who had been subjects of FDIC professional liability suits or criminal referrals during the 5 preceding years. The 12 RTC/FDIC-identified culpable employees held the vital positions of RTC managing agent, credit specialist, and operations specialist; loan workout officer at RTC conservatorship institutions; or FDIC credit specialist.

We did not include in our investigation two other persons whom FDIC identified because they did not have asset disposition responsibilities. These two, however, held positions of trust, as FDIC employed them as investigators to ascertain individuals' liability for institution failures.

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## GAO-Identified Employees Previously Found Culpable

Concentrating on employees with asset disposition responsibilities, we obtained a list of 1,132 Corporation employees from RTC and FDIC. We compared this list with RTC's database of subjects of professional liability suits and RTC's and FDIC's databases of subjects of criminal referrals to the Department of Justice. We found two additional employees deemed culpable in vital positions—an FDIC credit specialist and an RTC supervisory operations specialist.

FDIC hired the credit specialist in February 1993, although RTC had previously filed a criminal referral that named the individual in 1990. While FDIC was aware that this person had resigned from RTC in May 1992, FDIC's hiring and supervisory managers were unaware of the criminal referral until we asked that they check with RTC. The FDIC employee's responsibilities included the analysis of proposed workouts; settlements; and budgets of large, complex assets, ranging to several millions of dollars.

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RTC hired the supervisory operations specialist in February 1990. In April 1991, RTC made a criminal referral to the Department of Justice, naming this individual. RTC overlooked this individual in the list of culpable employees it provided to us although the criminal referral clearly stated that he was an RTC employee. This oversight further emphasizes the need for both an effective, systematic screening process and adequate databases to support it.

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## Additional Culpable Individuals May Hold Vital Positions

The Corporations' vulnerability may not be limited to the 14 RTC, FDIC, or conservatorship employees that we identified during our investigation. For example, we were limited in our ability to use FDIC's database of professional liability suits because the databases could not retrieve individuals by name. Thus, we were unable to determine whether the Corporations employed in vital positions any of the individuals whose names were contained in the database. Additionally, RTC maintained no database of employees of institutions that were in conservatorship and could not identify those having previous culpability determinations. Thus, RTC's vulnerability to fraud, abuse, or mismanagement is increased.

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## RTC Assessment Did Not Identify Its Vulnerability to Culpable Individuals

In March 1990, the U.S. Secret Service offered to do a vulnerability assessment targeting RTC employees and contractors. RTC did not accept the offer and performed its own assessment, which was published in November 1990.

The Secret Service proposal included a review of the application process for new RTC employees and its contractors, as well as a review of RTC databases and criminal referral processes. The subject of RTC's vulnerability assessment included adherence to RTC's ethical standards—FIRREA. RTC found that its employment efforts are particularly vulnerable "in view of the need to rapidly employ staff . . . because RTC must ensure that prospective employees meet its own and other ethical requirements." However, RTC's ethical standards for its employees do not specifically address the employment of individuals against whom an administrative determination of culpability has been made, with the result that RTC did not identify its vulnerability to such individuals. While we cannot be certain that a Secret Service assessment would have identified the lack of RTC controls for determining which employees and applicants were culpable, as RTC's focus was on existing ethical standards it did not identify this lack of controls as a vulnerability.

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## FIRREA Is Not Applied to Conservatorship Employees

RTC does not consider conservatorship employees to be either RTC or contract employees and therefore does not apply the FIRREA employment standards regarding competence, expertise, and integrity to them. We believe that conservatorship employees should be subject to the FIRREA standards because the standards apply to individuals who perform the functions and activities of RTC.

FIRREA establishes various experience and integrity standards that are applicable to RTC employees. FIRREA also states that

“Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the [RTC], under the direct supervision of an officer or employee of the [RTC], shall be deemed to be an employee of the [RTC] for the purposes of title 18, United States Code and [FIRREA].” (12 U.S.C.A. § 1441 a(n)(1)(West Supp. 1993)).

We found that many conservatorship employees perform critical functions of RTC, such as loan workout. They also report directly to an RTC employee, such as the managing agent or credit specialist. Nonetheless, RTC maintains that conservatorship employees are not subject to FIRREA’s employment restrictions.

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## Conclusions

RTC and FDIC do not have the systematic means to always know when they are about to employ, or are already employing, someone whom either Corporation has found to be culpable in the losses that caused the failure of a federally insured financial institution. Their inability to make informed decisions concerning the hiring or duties of such individuals increases the Corporations’ vulnerability to fraud, abuse, or mismanagement.

Further, while RTC will transfer its assets and operations to FDIC when RTC closes on December 31, 1995, we believe it is important for both Corporations to address the findings of this report now as they prepare for the transition period. Despite the dwindling number of institutions presently in conservatorship, the vulnerability of any failed thrift to culpable individuals will remain a concern as long as conservatorship is an available means of resolution.

Addressing the findings of this report will not only help protect the assets of the institutions under the Corporations’ purview, it will help provide FDIC with assurance that it is aware of any RTC and conservatorship/receivership institution employees who have been found culpable for the losses of failed institutions.

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## Recommendations

We recommend that the Acting Chairman of FDIC and the Deputy and Acting Chief Executive Officer of RTC direct their agencies to

- perform employment screening before hiring individuals and routinely do so for their current employees, using reliable databases of individuals found responsible for institution failures;
- develop reliable databases that will effectively identify individuals found culpable in institution failures;
- share information systematically, enabling each to be aware of those individuals the other has found culpable in the failure of federally insured institutions; and
- ensure that personnel guidance is clear and appropriate regarding employees and prospective employees for whom the Corporations have made culpability determinations.

We also recommend that RTC's Deputy and Acting Chief Executive Officer ensure that conservatorship employees who occupy positions with responsibilities for asset disposition—such as those performing loan workout functions—be included in the employment screening process.

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## Agency Comments

We sent a draft of this report to FDIC and RTC for comment. In their written comments dated September 14 and 16, 1994, respectively, FDIC and RTC agreed with our report and acknowledged that the issues raised are significant. According to FDIC's Acting Chief Operating Officer and Deputy to the Chairman, FDIC will continue to review the draft report's conclusions, providing us with the preliminary results of that review, and, in coordination with RTC, develop steps to correct the weaknesses identified. RTC's Chief Financial Officer indicated that RTC will pursue our recommendations to the fullest extent possible and proposed specific initiatives to address each recommendation. RTC's initiatives are responsive to our findings and recommendations. If fully and effectively implemented, these initiatives could resolve the issues identified. (See app. II and III for complete agency comments.)

As agreed with your office, we plan no further distribution of this report until 30 days after the date of the letter, unless you publicly announce its contents earlier. At that time, we will send copies to the Secretary of the Treasury, the Acting Chairman of FDIC, the Deputy and Acting Chief Executive Officer of RTC, and other interested parties. We will make copies of this report available to others upon request.

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If you have questions concerning our investigative findings, please contact Robert Hast, Assistant Director for Investigations, of GAO's New York Regional Office at (212) 264-0730. A list of major contributors is included in appendix IV.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard C. Stiener". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Richard C. Stiener  
Director

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## Abbreviations

FDIC	Federal Deposit Insurance Corporation
FIRREA	Federal Institutions Reform, Recovery, and Enforcement Act
GAO	General Accounting Office
OSI	Office of Special Investigations
RTC	Resolution Trust Corporation



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# Methodology

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We performed our investigation between October 1992 and December 1993. We reviewed and considered relevant laws, regulations, and policies and interviewed responsible management officials at RTC and FDIC headquarters.

From RTC, we requested the names of any RTC employee who had been the subject of a professional liability suit or criminal referral for responsibility in a failure of any federally insured institution since the inception of RTC. We requested the same information from FDIC regarding any FDIC employee in the past 5 years.

To verify whether the Corporations had provided us the names of all such individuals, we requested personnel information as well as professional liability suit and criminal referral information. We matched RTC and FDIC employees with responsibilities concerning assets of failed institutions against both organizations' criminal referral listings and against RTC's professional liability suit listing. From RTC, we obtained listings from databases of (1) federal employees with asset disposition responsibilities<sup>6</sup> and (2) individuals against whom RTC had filed professional liability suits or criminal referral actions for responsibility in the failures of federally insured institutions. From FDIC, we obtained listings from databases of (1) employees at FDIC consolidated offices who have responsibilities over assets of FDIC-controlled failed institutions and (2) individuals against whom FDIC had in the past 5 years filed professional liability suit<sup>7</sup> or criminal referral actions for responsibility in the failures of federally insured institutions.

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<sup>6</sup>We could not obtain listings of nonfederal conservatorship employees with asset disposition responsibilities as RTC maintains no database of them.

<sup>7</sup>We did not use FDIC's professional liability suit listing because it could not readily be converted into a format suitable for this screening purpose.

# Comments From RTC



RESOLUTION TRUST CORPORATION

Resolving The Crisis  
Restoring The Confidence

Chief Financial Officer

September 16, 1994

Mr. Richard C. Stiener  
Director  
Office of Special Investigations  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Stiener:

This letter is in response to the General Accounting Office (GAO) draft report dated August, 1994 entitled RTC/FDIC Risk Fraud and Mismanagement by Employing Those Deemed Culpable. We have carefully reviewed your draft report on the policies and procedures employed by the Resolution Trust Corporation ("RTC") and the Federal Deposit Insurance Corporation ("FDIC") to identify prospective job applicants and current employees who have been found to have caused losses to failed federally insured institutions. As you know, the RTC and FDIC will be responding separately to your draft report. Accordingly, our comments will be directed solely to those aspects of your report that deal exclusively with the RTC.

Your draft report offers five recommendations. We appreciate the significance of the issue and, accordingly, will pursue your recommendations to the fullest extent possible.

**Recommendations 1 & 2:** To perform employment screening before hiring individuals and routinely do so for current employees, using reliable databases of individuals found responsible for institution failures; And, to develop reliable database that will effectively identify individuals found culpable in institution failures;

**Response:** Your first two recommendations address the development of systems and procedures that could effectively help identify prospective job applicants and current employees who have been found to have caused losses to failed federally insured

801 17th Street, NW, Washington, DC 20434-0001

Tel. (202) 416-7221 Fax (202) 416-7226

Mr. Richard C. Stiener  
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institutions. We understand your criticism of the existing database, maintained by RTC's Department of Investigations, to be that effective queries are not possible because of the general lack of personal identifiers and because the data placed into the system does not have a sufficient accuracy rate.

In response to these points: (1) the RTC will ascertain whether the existing database is capable of performing effective searches for individuals; (2) the Department of Investigations will proceed immediately (to the extent the information is not already known) to obtain social security numbers (or other personal identifiers) of relevant former directors and senior officers of thrifts taken over by the RTC and input that information into the existing or a new (depending upon our conclusion regarding number one, above) database; (3) the RTC will include as a priority in our protocol for investigations, the receipt of personal identifiers of relevant former directors and senior officers; and, (4) institute reasonable quality control mechanisms to assess the reliability of information contained in the database.

**Recommendation 3:** To share information systematically, enabling each to be aware of individuals the other has found culpable in the failure of federally insured institutions;

**Response:** With respect to your recommendation that the RTC and FDIC systematically share information regarding individuals found to be "culpable", the RTC will propose, in connection with the various Transition Task Forces engaged in preparing for the RTC's ultimate transfer, that the appropriate task force be assigned the task of ascertaining the most effective means for the systematic sharing and transfer of such information. We will further propose that such a study and the action to be taken on its recommendations be expedited.

**Recommendation 4:** To ensure that personnel guidance is clear and appropriate regarding employees and prospective employees for whom the Corporations have made culpability determinations.

**Response:** As to the official RTC personnel guidance pertaining to job applicants and current employees for whom "culpability determinations" have been made, we note that you have not opined on the particular course of personnel action that should be pursued in any particular situation. Rather, your position is that RTC managers should be given direction on what steps to be taken in order to achieve a well-reasoned decision. As we both

Appendix II  
Comments From RTC

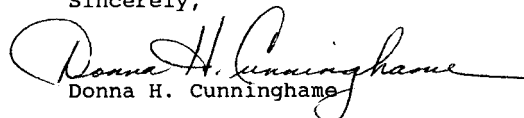
Mr. Richard C. Stiener  
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September 14, 1994

understand, in many instances there will be various employee rights and important due process considerations that must be taken into account in light of applicable federal personnel laws and regulations. Accordingly, we will revise the current personnel guidance, embodied in a January 4, 1994 memorandum, to state explicitly what we believe was generally understood by RTC managers to have been intended by our Office of Human Resource Management ("OHRM"). Specifically, RTC will establish a more formal protocol through which each individual situation will be analyzed by OHRM and the RTC Legal Division. In addition, RTC management will be directed on the steps to be taken to obtain a prompt decision.

Also, as to the issue of whether FIRREA's employment prohibitions would apply to RTC conservatorship (i.e., non-civil service) employees, the current RTC Resolutions Schedule reflects that all conservatorship will be resolved prior to the time any new procedures will be implemented.

I believe these actions and initiatives address the findings and recommendations in your report. If you have any questions concerning this response, or would like to discuss it further, please contact me, or Stan Pawlowski on (202) 416-7343.

Sincerely,

  
Donna H. Cunningham

cc: Dennis Geer, Acting Chief Operating Officer, FDIC  
Donald Wheeler, Deputy Director, Office of Special  
Investigations, GAO  
Gaston L. Gianni, Jr., Associate Director, Government  
Business Operations Issues, GAO  
Daniel Schultz, Senior Evaluator, Office of Special  
Investigations, GAO  
Ronald King, Assistant Director, Government Business  
Operations, GAO

# Comments From FDIC



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

September 14, 1994

Mr. Richard C. Stiener  
Director  
Office of Special Investigations  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Stiener:

This responds to your letter of August 23, 1994, requesting the FDIC's comments on GAO's draft report entitled Failed Financial Institutions: RTC/FDIC Risk Fraud and Mismanagement by Employing Those Deemed Culpable (GAO/OSI-94-19). As previously communicated to your staff, the FDIC and the RTC will be responding separately to your draft report. The FDIC's comments are directed only to those issues that specifically apply to the FDIC; however, we have had preliminary discussions with the RTC regarding the agency coordination issue raised in your report.

The Corporation agrees that appropriate and effective mechanisms, such as the four recommendations outlined in your draft report, should be present to assure that our vulnerability to waste, fraud or mismanagement in all aspects of our operations is kept to a minimum. Certainly, the draft report -- focusing as it does on the extent to which we might employ individuals who have been found culpable in the losses which caused financial institutions to fail -- raises a number of issues which warrant our further consideration. However, we are concerned that any means by which this matter might ultimately be addressed remain consistent with our obligations under applicable civil service laws governing merit staffing as well as sensitive to the rights of individuals to be treated fairly and without bias in the employment process.

At this time, we plan to continue to review the draft report's conclusions and, in coordination with the RTC, develop steps which we believe could be taken to effectively and equitably deal with the weaknesses it identifies. The preliminary results of this review will be communicated to you within the next 60 days.

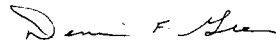
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Appendix III  
Comments From FDIC

Richard C. Steiner  
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We appreciate the opportunity to share our comments with you. Please feel free to contact me at (202) 898-6948 should you wish to discuss the draft report in further detail.

Sincerely,



Dennis F. Geer  
Acting Chief Operating Officer  
and Deputy to the Chairman

cc: James L. Bothwell, Director, Financial Institutions and  
Markets Issues, GAO  
Donald Wheeler, Deputy Director, Office of Special  
Investigations, GAO  
Gaston Gianni, Jr., Associate Director, Government Business  
Operations Issues, GAO  
Dan Schultz, Senior Evaluator, Office of Special  
Investigations, GAO  
Donna H. Cunninghame, Chief Financial Officer, RTC

# Major Contributors to This Report

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Office of Special  
Investigations,  
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