MEMORANDUM

July 5, 1989

TO : Chairman Ruder
Ed Coulson

FROM : Nina G. Gross
Director of Legislative Affairs

RE : AICPA Statement on the Senate FSLIC Bailout Bill, S. 774

I recently received the attached documents from B.Z. Lee, Deputy Chairman, Federal Affairs Committee, AICPA, outlining the organization's concerns with some of the audit provisions and enforcement powers included in both the House and Senate versions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (FSLIC Bailout Bill, H.R. 1278 and S. 774). B.Z. thought we would be interested in the Association's comments.

Attachment
cc: Bob Burns
Glenn Davis

AICPA STATEMENT ON S. 774
SECTION 301 SANCTIONING POWERS

- Section 301 of S. 774 vests the Office of Savings Associations with broad, undefined approval and sanctioning powers over an auditor's performance of savings institution audits.

- Title IX of S. 774 and H.R. 1278 already provide a panoply of enforcement and penalty provisions carefully crafted to guard the integrity of financial institutions. In the face of these provisions, Section 301 is superfluous.

- The powers conferred by Title IX include the power to issue cease and desist, suspension, and removal orders; and assess civil and criminal monetary penalties. When needed, these sanctions can be extended industry-wide. Title IX, by itself, provides a coherent, integrated enforcement structure which, in appropriate circumstances, can be applied to deal with failures in auditor performance.

- The scope and severity with which the Title IX enforcement and penalty provisions may be applied, coupled with exposures to civil liability and professional sanctioning powers, provides a comprehensive deterrent to malfeasance or misfeasance in the discharge of auditor responsibility.

- The open-ended provisions of Section 301 appear to add little real substance to this already impressive arsenal. It is nevertheless troublesome, however, because the provision is devoid of standards. We do not know on what terms auditor performance is to be adjudged or what type of sanctions are to be imposed.

- Section 301's failure to prescribe any procedures invites misdirected agency action. The notion that regulators will act reasonably on their own provides little comfort where there exists not so much as a "guideline" in Section 301. AICPA recommends that the sanctioning portion of Section 301 be deleted in recognition of the comprehensive enforcement and penalty provisions provided elsewhere in the legislation.

Attachment B

AICPA POSITION IN SUPPORT OF GAO-SPONSORED PROVISIONS RELATED TO THE AUDIT OF INSURED FINANCIAL INSTITUTIONS (H.R. 1278, SEC. 1201) IN SUBSTITUTION FOR COUNTERPART PROVISIONS IN SEC. 301 OF S. 774

- Sec. 1201 of H.R. 1278 would require annual audits for all insured financial institutions. This section has the strong backing of the General Accounting Office (GAO) and is supported by the American Institute of Certified Public Accountants (AICPA). The terms of this Section have been carefully worked out by the GAO and AICPA to give the greatest practical assurance that the requirements are technically sound and can be administered on a cost-effective basis.

- In this respect, the provisions place considerable reliance on generally accepted auditing standards and attestation standards developed by professional private sector standards setting bodies.

- The counterpart provisions in Sec. 301 of the Senate-passed bill are more narrow in scope and pertain only to mandatory audits of entities supervised by the Office of Savings Associations. We believe the more comprehensive and carefully worked out provisions of the House bill should be substituted for the Senate proposal.

- AICPA finds particularly troublesome that facet of the Senate bill which calls upon the Chairman of the newly-formed Office of Savings Associations to "establish rules governing the selection of independent auditors . . . and the performance of auditing services." On its face, this section is an open invitation to the Office of Savings Associations to depart from generally accepted auditing standards and to substitute, instead, specialized regulatory procedures to govern auditor qualification and the conduct of audits of insured savings associations. We are concerned that the implementing rules of the Office of Savings Associations could occasion considerable confusion and compliance difficulties.

- It has been AICPA's consistently-held and articulated position that auditors who fail to perform to standards should be held responsible for their actions -- both in civil proceedings and, where appropriate, through disciplinary sanctions. However, we believe it is of fundamental importance that auditor performance be adjudged in relationship to generally accepted auditing standards.

- For the past 55 years, this system has worked well for publicly-held companies under the Securities Exchange Act of 1934. The continuous disclosure system which that Act put in place to restore confidence in the capital markets relies on financial statements audited by independent public accountants operating within the disciplines imposed by generally accepted auditing standards. Over the years, any deficiencies noted in auditor performance have been based upon failures of auditors to observe standards. Challenges to the adequacies of the standards themselves have been rare.

- Similarly, in the case of alleged auditing deficiencies associated with audits of financial institutions, the complaint has been made that auditors have failed to perform in accordance with standards, not that the standards themselves were inadequate. AICPA sees no justification for asking government agencies to establish procedures peculiar to the audits of the financial statements of particular sectors of the economy. If that is what is envisioned under Sec. 301 of the Senate-passed bill, AICPA believes the Congress will have taken a dangerous step down a slippery slope with no corresponding public benefit to be served.

- Congressional inquiry into the causes of the present S&L crisis have repeatedly identified differences between Regulatory Accounting Principles (RAP) and Generally Accepted Accounting Principles (GAAP) as factors which masked the dimension of the crisis and contributed to unwise regulatory forebearance. In its efforts to reform the supervisory apparatus applicable to insured financial institutions, the Congress should not create an additional opportunity for mischief by inviting government agencies to establish "Regulatory Auditing Procedures." In the case of publicly-held companies, this could present a particular difficulty. In the extreme, one might even imagine that separate audits might be required.

- In short, we believe that the accounting profession and the Congress have had enough trouble with RAP/GAAP differences. We certainly do not need to embroil the accounting profession in RAS/GAAS differences (i.e., differences between the regulatory auditing standards and generally accepted auditing standards). This facet of Sec. 301 of S. 774 should be deleted in favor of the GAO-sponsored provisions of the House-passed bill which sensibly rely on generally accepted auditing standards.

June 6, 1989