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**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: SB93
 ABBREVIATED TITLE: Confidentiality - CFA B Records -

SPONSER: ZHAR off. A. I. S. C. ORIGINAL RECEIVED: 3-25-91
 WRITTEN REQUEST TO SCHEDULE REC'D: _____ FROM: _____
 SPONSER'S STATEMENT REC'D: _____ FROM: _____
 SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
 SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)
 RQST'D OF: _____ REC'D FROM: Div Banking DATE: With File -
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: Banking NOTICE OF HEARINGS GIVEN: _____
 COMMITTEES OF REFERRAL: FIRST: _____ SECOND: _____ THIRD: _____

COMMITTEE ACTION Draftsman - Terry Bannister
2450

DATE: 4-11-91 Heard - Held over -
4-12 Request Amend: P-Fund Residency / Disclosure Name -
4-16-91 Heard - amend Bill moved on local Rec -
Funds / Resid / Collin Holland Dallas
Calvin about TV Sen Sec 4-16-91

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|---------------------------------|----------------------------------|
| 1. SPONSOR <u>Zhar off</u> | 6. <u>Ed Crane CFA B 2762007</u> |
| 2. AGENCY <u>Div of Banking</u> | 7. _____ |
| 3. <u>John Lindauer 92-4684</u> | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 93

Revision Date: _____ Department Affected: Commerce & Economic Dev
 Title: Confidentiality of the BRU: Banking, Securities & Corporations
Commercial Fishing & Agriculture Bank Component: Banking
 Sponsor: Sen. Zharoff
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 93

Revision Date: _____ Department Affected: Commerce & Economic Dev
 Title: Confidentiality of the BRU: Banking, Securities & Corporations
Commercial Fishing & Agriculture Bank Component: Banking
 Sponsor: Sen. Zharoff
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1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5250

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • HISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Chairman
Senate Judiciary Committee

FROM: Senator Fred F. Zharoff

DATE: April 12, 1991

RE: Senate Bill 93 - CFAB Confidentiality

A number of questions arose regarding the Alaska Commercial Fishing and Agriculture Bank during yesterday's hearing on SB 93. For the benefit of the members of the Judiciary Committee, I wish to try to address those questions.

First, a request was made for CFAB to provide the committee with the names and addresses of its borrowers in response to concerns raised about their residency. My reading of current statutes indicates that CFAB is prohibited from complying with this request. AS 44.81.260 states:

"....the directors, officers, and employees of the bank shall hold in strict confidence all information regarding the business records of the bank...."

This leaves two solutions: (1) Amend SB 93 to allow the release of the names and addresses of CFAB's borrowers. Or, (2) Request the Legislative Auditor to determine if CFAB has followed the statutory residency requirements for making loans.

I had requested the Legal Services Division to research the legal questions surrounding the first solution. In reply, I received a memorandum from Ms. Theresa L. Bannister, legislative counsel, dated April 10, 1991. I distributed the memorandum to the committee members at the April 11 meeting. Ms. Bannister said the amendment is not without problems. She explained on page 3:

"If the names, addresses, and phone numbers of current CFAB borrowers were made available to the public by state statute, CFAB would have to determine whether or not to comply with the statute. If CFAB released the information and a court subsequently held that the release violated the

borrowers' privacy rights, CFAB would be liable to the borrowers for the release.

"In addition to liability under the privacy provision, if CFAB releases the information on current borrowers it may be exposed to court actions by its borrowers. Depending on the borrowers' agreements with CFAB, the borrowers may allege that CFAB is violating an agreement with them to keep their records confidential, and may seek damages for the release."

Ms. Bannister also noted:

"The public release of the information does not seem to be necessary because the state can already determine confidentially through the audits authorized under AS 44.81.270 whether CFAB is complying with the state residency requirements."

Because Mr. John Lindauer made serious charges during his testimony, I have taken the initiative of requesting the Legislative Budget and Audit Committee to authorize an audit into CFAB. Since the question arose about the residency of CFAB's borrowers, I would like to obtain a definite answer. I have attached a copy of my memorandum to the Legislative Budget and Audit Committee.

On the issue of residency, I note AS 44.81.210(a)(1) gives CFAB the power to make loans to individuals "who are residents". "Residents" are not defined in the statute. In 44.81.210(a)(20), CFAB's loans for the purchase of limited entry permits may only be made to individual commercial fishermen who have been state residents "for a continuous period of two years immediately preceding the date of application for the loan...."

In its official "Credit Policy" (copy attached), CFAB sets forth the standards it uses to determine residency. CFAB requires applicants to offer evidence relating to place(s) of domicile, Alaska Permanent Fund dividend status, driver's license, real property ownership, voter registration, foreign income tax status, and sport fishing/hunting license. It appears the protections for resident-only loans -- absent the exemptions specifically in statute -- are already in place.

I hope this will clear up the committee's concerns, and that SB 93 will be able to move forward.

If you or the committee members have further questions, please let me know. I look forward to further discussions on this bill at the next Judiciary Committee meeting.

cc: Judiciary Committee members

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

RECEIVED APR 10 1991

MEMORANDUM

April 10, 1991

SUBJECT: Release of certain CFAB records to the public
(SB 93, W.O. 7LS0451A)

TO: Senator Fred Zharoff
Attn: Karl 3473

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether state law could allow CFAB, upon written request, to release the names, addresses, and phone numbers of its borrowers to the public. This would take the form of an amendment to SB 93, your bill that amends CFAB's record confidentiality provisions. The purpose of the amendment would be to allow individuals to independently verify whether CFAB's borrowers are Alaska resident.^{1/}

You have also requested other information relating to this issue. Most of those questions are answered in the text and footnotes of the discussion of the main issue. One additional question is answered separately at the end.

1. **SHORT ANSWER TO MAIN QUESTION.** The state constitutional right to privacy may prevent CFAB from releasing the names, addresses, and telephone numbers of its borrowers, even if allowed by statute. However, if the amendment only applies to persons who become borrowers after the effective date of the amendment, the right to privacy would not apply since these borrowers would have no expectation of privacy in this information.

2. **DISCLOSURE OF CERTAIN INFORMATION TO THE PUBLIC.** The confidentiality of CFAB records is governed by AS 44.81.260. It does not appear that any federal statutes govern the confidentiality of its records.^{2/} AS 44.81.010 exempts

^{1/} Contrary to your memo, some loans may be made to persons who are not Alaska residents. See AS 44.81.210(a)(23) and (c).

^{2/} The only federal statute that appears to govern bank record confidentiality is the Right to Financial Privacy Act, 12 U.S.C. 3401 - 3421. That act restricts the access by government authorities to the records of certain financial institutions. After discussion of this act with Mr. Crane of CFAB, it appears that CFAB does not fit into any of the categories of financial institutions that are governed by the Act.

Senator Fred Zharoff

April 10, 1991

Page 2

CFAB from AS 06.05 (Alaska Banking Code), so its records are not covered by the confidentiality provisions of AS 06.05.175.^{3/}

Whether or not the names, addresses, and telephone numbers of CFAB borrowers could be made public by statute depends on whether or not their release would violate the borrowers' right to privacy under art. I, sec. 22 of the state constitution or the federal right to privacy doctrine (developed from the due process clause of the fourteenth amendment and other federal constitutional provisions).

The federal position with regard to bank records is that a bank customer has no reasonable expectation of privacy that society is prepared to recognize in financial statements that the customer voluntarily turns over to the bank. United States v. Miller, 425 U.S. 435, 440 - 43, 96 S.Ct. 1619, 1622 - 24, 48 L.ED.2d 71 (1976). Thus, it does not appear that the United States Supreme Court would recognize a borrower's right to privacy in the borrower's name, address, and phone number that the borrower had voluntarily turned over to CFAB.

Although the state has not decided this specific question, under the state's privacy provision the Alaska appellate court has held that the right to privacy does not extend to the name and address held by a utility for a utility customer. State v. Chryst, 793 P.2d 538, 542 (Alaska 1990). On the other hand, the Alaska Supreme Court has held that the right to privacy does extend to the names of a doctor's patients. Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977). This was due, in part, to the medical information that can be revealed in some cases by identifying the physician one uses (due to the fact that some physicians have practices limited to certain types of medical treatment), and because the required disclosure covered all classes of patients or physicians.

Since the appellate court in Chryst felt that a person's name and address, by themselves, do not constitute information about which a person can have a reasonable expectation of privacy that society is willing to recognize, it is possible that the supreme court may not extend the right to privacy to the names, addresses, and telephone numbers of CFAB members, unless it determines that the context of this situation indicates that the expectation of privacy is greater and the state is willing to recognize that expectation of privacy as reasonable. See Chryst at 540.

Whether or not people regard the fact that they are borrowers at CFAB as private information would have to be determined. A person would certainly consider financial information (e.g., that the person has a loan at CFAB) to be more private than whether the person is a utility user. However, on the other hand, when a person uses an organization such as CFAB for financial transactions, the expectation

^{3/}This statute requires that banks in the state keep their customer records confidential, except as otherwise allowed by the statute. The statute applies to all banks in the state, including federally chartered banks.

Senator Fred Zharoff
April 10, 1991
Page 3

of privacy is certainly less, since the organization is subject to more examination and public scrutiny than the usual lending institution.

When considering this issue, it is possible that the court may consider the fact that the information is being made generally available to the public. An affirmative requirement in the statute that the information be made available generally to the public may be considered an excessive and unnecessary approach to the problem of determining CFAB's compliance with the Alaska residency. This may cause the court to be more conservative when determining whether to find a privacy interest. The public release of the information does not seem necessary because the state can already determine confidentially through the audits authorized under AS 44.81.270 whether CFAB is complying with the state residency requirement.

In conclusion, it is not clear whether the court would hold that the right to privacy extends to this information when applied to current borrowers. If it did, then CFAB could not release the information on current borrowers to the general public as envisioned by the requested amendment.

However, if the amendment were drafted to apply prospectively only, thereby only covering persons who become CFAB borrowers after the effective date of the amendment, the right to privacy would not apply because those borrowers would have no expectation of privacy in the information. If you would like an amendment drafted along these lines, please advise.

3. LEGAL IMPLICATIONS FOR CFAB IF RECORDS PUBLIC. If the names, addresses, and phone numbers of current CFAB borrowers were made available to the public by state statute, CFAB would have to determine whether or not to comply with the statute. If CFAB released the information and a court subsequently held that the release violated the borrower's privacy rights, CFAB would be liable to the borrowers for the release.

In addition to liability under the privacy provision, if CFAB releases the information on current borrowers it may be exposed to other court actions by its borrowers. Depending on the borrowers' agreements with CFAB, the borrowers may allege that CFAB is violating an agreement with them to keep their records confidential, and may seek damages for the release.

If I may be of further assistance, please advise.

TLB:pl:gc
91-240.plm



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5250

DURING SESSION:

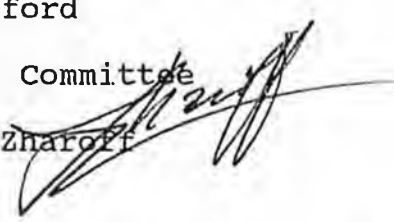
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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Chairman
Senate Judiciary Committee

FROM: Senator Fred F. Zharoff 

DATE: April 2, 1991

RE: Senate Bill 93 - "An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

Senate Bill 93 passed out of the Senate Labor and Commerce Committee on March 25 with three "do pass" recommendations. I respectfully request that SB 93 be scheduled for a hearing before the Senate Judiciary Committee at the committee's earliest convenience.

SB 93 rewrites AS 44.81.260, the statute governing the confidentiality of the Alaska Commercial Fishing and Agriculture Bank's records. The bill was introduced at CFAB's request.

The statute presently holds CFAB to a very strict standard of confidentiality, saying, "...the directors, officers, and employees shall hold in strict confidence all information regarding the business records of the bank..." The statute allows exemptions for the legislative auditor, the legislature (statistical and impersonal information only), the farm credit system, and for specific litigation.

This language has created problems for CFAB in the time period since its adoption (SLA 1981). On at least four occasions, attorneys, regulators, law enforcement agents, and judges have sought access to CFAB's records. Under the law, CFAB's only option has been to say "no", forcing formal confrontations before the courts. The end result -- after much time and expense -- is that CFAB predictably loses the cases and the court issues orders requiring CFAB to produce the records. This has happened so far in three cases, with one case still pending.

SB 93 rewrites the statute to avoid unnecessary litigation and provide avenues for the legitimate release of information.

While preserving the confidential nature of CFAB's records, it allows exemptions for search warrants, subpoenas, court orders, investigations, legislative audits, etc.

The following backup information is attached:

1. Sectional analysis.
2. Department of Commerce & Economic Development position paper.
3. Department of Commerce & Economic Development fiscal note.
4. Current CFAB confidentiality statute.
5. Current confidentiality statute for banks and financial institutions.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 488-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIIBLOF ISLANDS • SHUMAGIN ISLANDS

1

SECTIONAL ANALYSIS

SENATE BILL 93

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

SECTION 1

Rewrites AS 44.81.260, the section that currently establishes the confidentiality requirements for the records of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

- (a) Provides for the confidentiality of those records identified with a specific borrower, bank member, or loan applicant, or can be identified as being from the records of one of those persons. Allows exemptions (1) through (9).
- (b) Allows CFAB to keep all of its other records confidential, subject to exemptions (a)(1)-(5).
- (c) Allows disclosure of records if a borrower, bank member, or loan applicant authorizes the disclosure in writing.
- (d) Defines "member" and "records".

SECTION 2

Immediate effective date.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 1/30/91

FURTHER: Judiciary

Date of 5-Day Notice: 3/21/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

L&C Committee considered SB 93

Confidentiality of the records of the Commercial Fishing and Agriculture Bank; efd.

and recommended:

- replace with _____ CS _____ same title
- attached amendment(s) new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) COMMERCE 1/3-20-91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

By [Signature]
Chairman [Signature]

[Signature]
Chair: Signature and Recommendation



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 488-5259
DURING SESSION:
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce
Chair
Labor and Commerce Committee

FROM: Senator Fred F. Zharoff

DATE: March 8, 1991

RE: Senate Bill 93 - "An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

I respectfully request that SB 93 be scheduled for a hearing before the Senate Labor and Commerce Committee at the committee's earliest convenience.

SB 93 rewrites AS 44.81.260, the statute governing the confidentiality of the Alaska Commercial Fishing and Agriculture Bank's records. The bill was introduced at CFAB's request.

The statute presently holds CFAB to a very strict standard of confidentiality, saying, "...the directors, officers, and employees shall hold in strict confidence all information regarding the business records of the bank..." The statute allows exemptions for the legislative auditor, the legislature (statistical and impersonal information only), the farm credit system, and for specific litigation.

This language has created problems for CFAB in the time period since its adoption (SLA 1981). A number of instances have occurred when attorneys, regulators, law enforcement agents, and judges have sought access to CFAB's records. Under the law, CFAB's only option has been to say "no", forcing formal confrontations before the courts. The end result -- after much time and expense -- is that CFAB predictably loses the cases and the court issues orders requiring CFAB to produce the records.

SB 93 rewrites the statute to avoid unnecessary litigation and provide avenues for the legitimate release of information. While preserving the confidential nature of CFAB's records, it allows exemptions for search warrants, subpoenas, court orders, investigations, legislative audits, etc.

Memo to Senate Labor and Commerce - page 2

The following backup information is attached:

1. Sectional analysis.
2. Current CFAB confidentiality statute.

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 93

Title Change?

BY SENATOR HALFORD

Page 1, line 2, following "Bank":

Insert "and the residency requirements for its loans"

Page 1, following line 3:

Insert a new bill section to read:

"* Section 1. AS 44.81.210(a)(1) is amended to read:

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers, and marketers, or to corporations, partnerships, or joint ventures engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank; in this paragraph, "resident" means an individual who is eligible for a permanent fund dividend under AS 43.23.005 for the dividend year during which the individual applies for a loan under this section whether or not the individual has applied for the permanent fund dividend;"

Page 1, line 4:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill section accordingly.

Page 2, following line 18:

Insert a new subsection to read:

"(d) Notwithstanding the other provisions of this section, the bank shall release to the public the names and addresses of its borrowers."

Reletter the following subsection accordingly.

Page 2, following line 22:

Insert a new bill section to read:

"* Sec. 3. AS 44.81.210(a)(1), as amended by sec. 1 of this Act, and AS 44.81.260(d), enacted by sec. 2 of this Act, do not apply to a person who is a borrower at the Commercial Fishing and Agriculture Bank unless the person applies for a loan from the bank after the effective date of this Act."

Renumber the following bill section accordingly.

John Lundown says -

Fred introduced at Request of CFAB
CFAB wants bill to conceal fact they are
loaning to Non Alaskan.

They advertise in outside papers.

Booth at Seattle Show had application
for AK Driver license, voter registration
& P Fund. Some non residents could
become residents.

Only CFAB can loan on Id Entry permit.

SB 93 - CFAB -

4-11-91

Defense of records access cases has cost CFAB
\$40,000

Checks Subpoena power of legislature.

Ed Crane - Here -

John Hindman -

Is CFAB loaning only to Bona Fide Residents -
Comte should require audit of residences of all borrowers
before passing.

Amend - Require Name & address of each borrower
to be reported to legislature each year.

Rick - Seems reasonable to have access to names
& addresses for legislature -

Rodley - other state financial banks provide this.

Ed Crane Drags his feet on this -

Asst. Gov - What loan Programs provide name disclosure.

4-16-91 Heard Again -

Where is New Draft CS With P Fund?

Rodley feels can disclose names now.

Zaroff has requested Audit. Think P Fund might
weaken residence standard as they may require more
than a year in some cases -

7-LS0451ND
Bannister
4/16/91

CS FOR SENATE BILL NO. 93 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of the records of the Commercial Fishing and
2 Agriculture Bank and the residency requirements for its loans; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 44.81.210(a)(1) is amended to read:

6 (1) make variable rate or fixed rate loans to individuals who are residents and
7 who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers,
8 and marketers, or to corporations, partnerships, or joint ventures engaged in commercial
9 agriculture or fishing, the majority interest of which is beneficially owned by residents of the
10 state and a majority of the owners of which are residents of the state, if the recipient of the loan
11 is a member of the bank; however, the bank may make a loan under this paragraph to a
12 corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or
13 for the repair or renovation of an existing fishing vessel, the primary purpose of which is to
14 commercially harvest fishery resources, only if the corporation, partnership, or joint venture is

1 wholly owned and controlled by residents of the state and if the recipient of the loan is a member
 2 of the bank; in this paragraph, "resident" means an individual who is eligible for a
 3 permanent fund dividend under AS 43.23.005 for the dividend year during which the
 4 individual applies for a loan under this section whether or not the individual has applied
 5 for the permanent fund dividend;

6 * Sec. 2. AS 44.81.260 is repealed and reenacted to read:

7 Sec. 44.81.260. CONFIDENTIALITY OF RECORDS. (a) The records of the bank that
 8 are identified with, or identifiable as being derived from the records of, a specific borrower,
 9 member of the bank, or applicant for a loan are confidential and may not be disclosed by the
 10 bank or by its directors, officers, employees, or agents to a person other than the directors,
 11 officers, employees, or agents of the bank, except

- 12 (1) when required by a federal or state statute;
- 13 (2) under AS 44.81.270;
- 14 (3) under a search warrant issued under federal law or the law of this state;
- 15 (4) under a subpoena or court order issued in a civil action under federal law or
 16 the law of this state;
- 17 (5) under a subpoena or court order issued in connection with a proceeding before
 18 a federal grand jury or grand jury of this state;
- 19 (6) under a summons or subpoena issued by an agency or a department of the
 20 United States or this state, or an officer, employee, or agent of the agency or department;
- 21 (7) under a request by a financial institution, if the request is solely for the stated
 22 written purpose of determining the credit worthiness of a member or borrower as an applicant
 23 for credit, and if the information disclosed by the bank pertains only to the payment history of
 24 the member or borrower;
- 25 (8) under a request by a lender that has extended or is considering extending
 26 credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;
- 27 (9) when disclosed to the attorney general of the United States or to a law
 28 enforcement agency of this state if the records may be relevant to a report or investigation of a
 29 possible violation of federal law or a law of this state.

30 (b) The records of the bank that are not subject to (a) of this section may be kept
 31 confidential by the bank, subject to the exceptions listed in (a)(1) - (5) of this section.

1 (c) Notwithstanding (a) - (b) of this section, a borrower, a member of the bank, or an
2 applicant for a loan may authorize the bank in writing to disclose records provided to the bank
3 by the borrower, member, or applicant.

4 (d) Notwithstanding the other provisions of this section, the bank shall release to the
5 public the names and addresses of its borrowers.

6 (e) In this section,

7 (1) "member" includes past and present members;

8 (2) "records" means financial and other records, including information known to
9 have been derived from the records, in any form, including original documents and copies.

10 * Sec. 3. AS 44.81.210(a)(1), as amended by sec. 1 of this Act, and AS 44.81.260(d), enacted by sec.
11 2 of this Act, do not apply to a person who is a borrower at the Commercial Fishing and Agriculture
12 Bank unless the person applies for a loan from the bank after the effective date of this Act.

13 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO. 93

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS ZHAROFF, Sturgulewski

Introduced: 1/30/91
 Referred: L&C and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of the records of the Commercial Fishing and
 2 Agriculture Bank; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 44.81.260 is repealed and reenacted to read:

5 Sec. 44.81.260. CONFIDENTIALITY OF RECORDS. (a) The records of the bank that
 6 are identified with, or identifiable as being derived from the records of, a specific borrower,
 7 member of the bank, or applicant for a loan are confidential and may not be disclosed by the
 8 bank or by its directors, officers, employees, or agents to a person other than the directors,
 9 officers, employees, or agents of the bank, except

- 10 (1) when required by a federal or state statute;
 11 (2) under AS 44.81.270; *Present law -*
 12 (3) under a search warrant issued under federal law or the law of this state;
 13 (4) under a subpoena or court order issued in a civil action under federal law or
 14 the law of this state;

1 (5) under a subpoena or court order issued in connection with a proceeding before
2 a federal grand jury or grand jury of this state;

3 (6) under a summons or subpoena issued by an agency or a department of the
4 United States or this state, or an officer, employee, or agent of the agency or department;

5 (7) under a request by a financial institution, if the request is solely for the stated
6 written purpose of determining the credit worthiness of a member or borrower as an applicant
7 for credit, and if the information disclosed by the bank pertains only to the payment history of
8 the member or borrower;

9 (8) under a request by a lender that has extended or is considering extending
10 credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;

11 (9) when disclosed to the attorney general of the United States or to a law
12 enforcement agency of this state if the records may be relevant to a report or investigation of a
13 possible violation of federal law or a law of this state.

14 (b) The records of the bank that are not subject to (a) of this section may be kept
15 confidential by the bank, subject to the exceptions listed in (a)(1) - (5) of this section.

16 (c) Notwithstanding (a) - (b) of this section, a borrower, a member of the bank, or an
17 applicant for a loan may authorize the bank in writing to disclose records provided to the bank
18 by the borrower, member, or applicant.

19 (d) In this section,

20 (1) "member" includes past and present members;

21 (2) "records" means financial and other records, including information known to
22 have been derived from the records, in any form, including original documents and copies.

23 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

SB 93: An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

The department has no opposition to this bill, as it does not affect any of the department's programs.

 *Glenn A. Olds* Asst. Comm.

Glenn A. Olds, Commissioner

Date: 3-21-91



2550 Denali Street, Suite 1201
P. O. Box: 92070
Anchorage, Alaska 99509-2070
(907) 276-2007

April 15, 1991

Senator Rick Halford
Chairman, Senate Judiciary Committee
Post Office Box V (M.S. 3100)
Juneau, Alaska 99801

Dear Chairman Halford,

I wish to convey my regrets that due to schedule conflicts I will be unable to appear in Juneau on April 16, when the Senate Judiciary Committee is scheduled to again consider SB93. I wish to submit this letter, for incorporation into your committee's files, in order to respond to questions raised at the April 11 hearing.

I am particularly anxious that the questions stimulated by Mr. Lindauer's testimony not be permitted to delay SB93, which corrects what have been some costly inadequacies for CFAB. The references to "cover-up" are absurd. SB93 was drafted specifically to broaden the circumstances under which CFAB may release information which must presently be held confidential.

It would appear that the discussion on April 11 gave rise to two distinct issues (neither of which is related to SB93): (a) Mr. Lindauer's vague allegations, and (2) your expressed concerns with regard to what CFAB's past conduct has been -- it was not clear whether those concerns are independent or if they arise because of Mr. Lindauer's remarks.

As to the first issue, it would seem that Mr. Lindauer should be urged to step forward with his evidence. In any event, I am prepared to state -- and would repeat under oath -- that, at least since mid-1985 if not throughout its existence, CFAB has not knowingly made any loan which violated any provision of its governing statute. If Mr. Lindauer disagrees, I would expect him to support that with some reasonable evidence.

With regard to your own concerns, I believe they can be resolved within the existing provisions of AS44.81.270. CFAB would certainly not resist that in any way. As I mentioned on April 11, it would likely not take over 3 days for one of the Legislative Auditor's staff to review the evidence concerning residency for every loan on CFAB's books. A "spot check" approach would be even faster.

Senator Rick Halford
Chairman, Senate Judiciary Committee
April 15, 1991
Page 2

In any event, I would be better able to address your concerns if you could inform me of their bases. As background, I should mention that CFAB has seven Directors. Five of them are Alaska fishermen, one is an Alaska farmer. Five are elected by their borrowing peers. I do not understand what motivation could conceivably exist for seven Directors and eighteen employees to conspire to routinely violate a State statute in an area which can so readily be reviewed under AS44.81.270. I cannot imagine what potential reward could make that a viable risk! Attached are the first two pages of CFAB's Credit Policy adopted by its Board of Directors and which I am charged with implementing; as you can see, the first two items mentioned are compliance with AS44.81 in general and with the residency requirement in particular. Also attached are the pages of CFAB's standard loan application which bear numerous questions relating to residency as well as the applicant's certification in that regard.

You and I have had enough discussions in the past for me to recognize that you have reservations, at least philosophical reservations, about the appropriateness of CFAB's existence and purpose. That's understandable; for other reasons, I have certain reservations myself! If the appropriateness is to be debated, you certainly have access to the means and the forum for such a debate. We at CFAB are hired hands whose only guidance is the owners' expressions of intent and expectations written thirteen years ago. Speaking for myself, I take considerable personal pride in, and receive considerable satisfaction from, making things work right. It is admittedly true that in the early stages of its existence CFAB's judgments were not always prudent and its conduct not always responsible. In recent years, however, there has been total commitment to meeting the mandated purpose and to positioning the institution for the required repurchase of the State's investment in the year 2000. We do not issue press releases and seek headlines, and we do not attempt or presume to be of political consequence. CFAB provides audited financial statements annually to the Legislature and the Governor. At CFAB's instigation (in 1987) and expense, a State Bank Examiners' report is also provided annually to the Legislature and the Governor. CFAB routinely responds to random requests for information from Legislators, from the Legislative Auditor, and from various State agencies and the press. CFAB is not, and does not try to be, a "secret" organization. Our policy with Legislators and Legislative bodies is to speak with candor. Even though we recognize that CFAB's uniqueness, combined with legislative turnover, will always engender some difficult or complex discussions and explanations during committee hearings, it is debilitating to be confronted with a need to defend the institution's existence each time we tell the Legislature, "Here's a way you can make your owners' directions to us more effective and more in harmony with the world of commerce in which CFAB operates."

Senator Rick Halford
Chairman, Senate Judiciary Committee
April 15, 1991
Page 3

In closing, I would like to stress again our commitment to accountability to the Legislature. That is the position of CFAB's Board of Directors and it is my position, both personally and as CFAB's president. We believe the means for accountability exist, and urge that they be utilized. We do not believe that accountability would be achieved simply through publication of CFAB's borrowers' names and mailing addresses. We cannot identify any favorable purpose which would likely be served; and there is potential for considerable harm, not the least of which would be to CFAB's own competitive position. We do not believe the rationale, "Those people are borrowing State money" is valid from either a legal standpoint or a practically realistic one. The State has not exempted CFAB from paying State corporate income tax "because it is loaning State funds." The State has not stepped in to assist in the defense when CFAB has been sued as a lender. The State has no standing in an action against a defaulting CFAB borrower; as a matter of fact, on at least one occasion CFAB has found itself in legal conflict with the State as a competing creditor. AS 4.81 requires CFAB to repurchase the State's investment in total; there is no provision for the deduction of amounts which may have been lost through uncollectible loans.

Again, we do not deny the accountability of CFAB and its officers and directors for effective and proper implementation of CFAB's statute. That accountability extends to all aspects of CFAB's conduct and operations. If it is to be sought, it should not simply be limited to the identification of those individuals who have sought, and pay for, the benefits of CFAB's services. Neither should the accountability process be permitted to delay the meaningful benefits which will be made available by passage of SB93.

Thank you for your consideration.

Very truly yours,



Edward E. Crane
President

KEG:cmv
Enclosures

cc: Senate Judiciary Committee Members

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

CREDIT POLICY

ADOPTED DECEMBER 14, 1989

The cornerstone of CFAB's credit policy and lending activities is its statute, AS44.81, supplemented by other State and Federal laws or regulations which apply to lenders generally.

While it is CFAB's policy to adhere strictly to both the letter and the spirit of AS44.81, CFAB also intends that all loan applications and proposals be thoroughly investigated and analyzed to be certain that rejections are not unnecessarily or inappropriately premised on the superficial application of that statute.

Residency

CFAB is authorized to finance only residents of Alaska (or legal entities which are primarily owned and controlled by Alaska residents). The term "resident" is not extrinsically defined for CFAB, however. It shall be CFAB's policy to require applicants or principals to offer a range of evidence as to their respective residencies, including but not limited to: Place(s) of domicile; driver's license; real property ownership; voter registration; foreign income tax status; Alaska Permanent Fund dividend status; and sport fishing/hunting license, etc. Absent an awareness of contradictory factors or

Credit Policy
Adopted December 14, 1989

matters suggesting further investigation, CFAB shall accept all such representations at face value if they are certified as correct by the submitters. Questionable situations must be referred to a CFAB senior officer for review, and that officer's conclusion with regard to residency must be reported in a signed memorandum which documents the evidence considered.

In general, CFAB shall consider circumstances existing for a year or more in its determinations of residency. As a specific exception, however, AS44.81.210.(a)(20) provides that a loan whose purpose is to finance the purchase of an Alaska limited entry permit may be made only to a person who has continuously been a state resident for the preceding two years.

Industry Orientation

CFAB's statute permits and directs it to make loans to entities "...who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers and marketers..." Of the various terms used, only "supplier" is defined by the statute; it "...means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture."

In its Bylaws, CFAB has defined "farming" in broad and comprehensive terms and has incorporated into it many activities related to forest

ALASKA COMMERCIAL FISHING & AGRICULTURE BANK

2550 Denali Street, Suite 1201

Anchorage, Alaska 99503

(907) 276-2007

APPLICATION FOR COMMERCIAL FISHING LOAN

Application is hereby made by the undersigned (hereinafter called "Applicant," whether one or more natural persons or legal entities) to Alaska Commercial Fishing and Agriculture Bank (CFAB) for a loan amount of \$ _____ for the purpose of _____ to be paid over a term of _____ year(s) in (circle one) monthly, quarterly, semi-annual, or annual payment(s), based upon the representations, terms, and conditions set forth below, and in the supplemental documents forming a part of this application. Applicant is a bona fide harvester or processor or marketer or supplier of aquatic products for economic gain.

I propose that the loan be secured by the following collateral: (Include USCG document number(s), permit number(s), legal description(s), etc.)

I have been a resident of Alaska since month _____ year _____

I have held a commercial fishing license from _____ to _____

PERSONAL DATA

Name of Applicant _____

Social Security # _____ and/or IRS Identification # _____

Birthdate _____ Place of Birth (city and state) _____

Residence Address _____ Residence Phone _____

City _____ State _____ Zip _____ How Long? _____ Rent Own

Mailing Address _____ Business or Contact Phone _____

City _____ State _____ Zip _____

Physical addresses of all prior residences during the past three years and dates occupied:

Address _____ from _____ to _____

Address _____ from _____ to _____

Address _____ from _____ to _____

Address _____ from _____ to _____

Do you own an interest in residential real property in any other state? Yes No

If yes, specify _____

HOUSEHOLD DATA

Married Unmarried (including single, divorced or widowed) Number of dependents _____

State the name of your spouse _____

Does she/he permanently live at your present address? Yes No

If no, in what state does she/he live? _____

List the name, relationship and complete address of each dependent claimed on your latest Federal income tax return:

Name	Address	Relationship

EMPLOYMENT

Name of current employer _____

Address _____

Supervisor _____ Gross Monthly Salary \$ _____

Date of Hire _____ If less than one year, name of most recent previous employer:

Employer _____

Address _____ Telephone _____

Inclusive dates of employment from _____ to _____

RESIDENCY

Are you licensed to drive in Alaska? Yes No ADL # _____

Are you licensed to drive in any other state? Yes No

Are you registered to vote in Alaska? Yes No Voter Registration # _____

Have you received any Permanent Fund Dividend checks? Yes No

If yes, for which year(s)? _____

Do you possess a resident Alaska sport fishing, hunting or trapping license? Yes No

Type and License # _____

In what year did you first qualify for a resident Alaska sport fishing, hunting or trapping license? _____

Please provide the name, mailing address and telephone number of three adults in Alaska whom CFAB may contact to verify your residency:

Name	Address	Telephone

CO-APPLICANT (INCLUDING SPOUSE)

Name _____ Social Security # _____

Address _____ Telephone _____

Previous Address _____

Birthdate _____ Place of Birth (city and state) _____

Relationship to Applicant _____

Employer _____ Occupation _____

Employer Address _____ Phone _____

Date of Hire _____ Supervisor _____ Gross Monthly Salary \$ _____

GENERAL INFORMATION (Please use additional paper if necessary for explanation.)

1. Are any parts of your fishing operation carried out on a partnership basis or by a corporation? _____

If so, explain _____

2. Have all required income tax returns been filed? _____ Any unpaid deficiencies? _____ Any returns under dispute? _____

If so, explain _____

3. Liability:

Partnership loans \$ _____; or for others as endorser or guarantor \$ _____; as surety \$ _____

If so, explain _____

4. Any judgements, suits or pending litigation outstanding against the applicant or a co-applicant? _____

If so, explain _____

5. Do you own a vessel required to be documented? Yes No

Port of Registry (official Coast Guard designation) _____

6. Are you aware of any claims of any kind which have been alleged or threatened against your vessel? _____

If so, explain _____

7. Have you, a co-applicant, or any business any of you were owners in, ever filed bankruptcy? _____

If so, explain _____

8. Have any commercial fishing violations ever been alleged or charged against you, or a co-applicant, or your vessel by a Federal or State agency? _____

If so, explain _____

9. Have you ever applied for a CFAB loan before? _____

If yes, approximately when? _____

I CERTIFY that I have been an Alaska resident for a continuous period of _____ year(s) immediately preceding this date and intend to remain an Alaska resident.

The undersigned hereby certifies that the information contained in this application is true and correct to the best of his/her knowledge.

Signature _____ Date _____

Signature _____ Date _____

Signature _____ Date _____

Signature _____ Date _____

Doug,

We've had some followup today to the Legislative Auditor's memo about CFAB.

(1) A clarifying memo from Randy Walker

(2) A memo from CFAB president Ed Crane.

I am providing these to you in order to complete the record.

Y. L. O'Brien

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

RECEIVED APR 29 1991

TO: The Honorable Fred Zharoff
Alaska State Senate

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 29, 1991

RE: Commercial Fishing and Agriculture Bank (CFAB)

As a follow up to my memo dated April 27, Mr. Ed Crane, President of CFAB, has communicated a concern to me that I believe is legitimate. On page two of my memo the primary schedule is titled "Questionable Loans". The schedule may have been more appropriately titled "Loans Issued with Unanswered Residency Questions".

If the schedule is viewed in light of the narrative preceding it, I believe it explains what the schedule is intended to convey. We strictly applied CFAB's residency standards and the schedule in the memo reflects all loans where we found anything in the loan file that should have caused the loan officers to further pursue a residency question.

Overall, while the memo shows that CFAB needs to re-emphasize the importance of documentation review with staff, there is clearly no indication of widespread noncompliance with the residency statute. This is further supported by the comparison to other independent sources as summarized at the end of the memo.

If further clarification is necessary, please contact me.

cc: Representative Ron Larson
Senator Virginia Collins
Edward E. Crane
Members of the Legislative Budget
and Audit Committee

TO: Randy Welker, Legislative Auditor

FROM: Ed Crane, CFAB *Ed Crane*

DATE: April 29, 1991

Thanks for the copy of your April 27 report. We are extremely grateful for your Division's timely response to the audit request; we would also like to compliment the professional approach of your staff.

Because I've been privy to some of the dialogue with the legislature relative to question at hand, and because I anticipate the likelihood of further discussion on the matter, I am frankly uneasy about your choice of the caption "QUESTIONABLE LOANS" on the table on Page 2. It is inconsistent with the first sentence on the page and inconsistent with my understanding of the auditors' questions (in most cases); and it is a phrase which lends itself to distortion and misapplied emphases.

Your staff members applied rigorous standards in their review. As expressed in the report, however, it was a review of documentation rather than of residency. To our knowledge there is a reason for each question raised by the auditors (under the standards they appeared to apply). In the aggregate, the questions they raised have already caused us to re-examine certain practices and to emphasize to loan officers the need to more consistently observe and address some kinds of details. In at least two cases, we now question whether individuals who had been lifelong Alaskans and who had two and three previous CFAB loans, respectively, may not have crossed the vague line into non-residency prior to their most recent loans. In short, we view this recent review as a constructive event, and we do not argue the reasons for any questions raised (again, within the context of the standards). Please, though, consider the following examples:

Your audit control No. 558 represents a 1991 loan to a lady who, it appears, has never lived outside of the Bristol Bay region. She has been an employee of the Southwest Regional School District since 1973. On 1987 and 1988 tax returns her family's permanent fund dividends clearly appear as separately identified items on the "other income" line. On her 1989 return there is a much larger amount on that line with a "see attached schedule" notation. CFAB does not have a copy of the supplemental schedule. Your auditor perceived that omission to be the basis for a "question"; however, we believe it is misleading to characterize such a situation as a "questionable loan." CFAB did not fail to satisfy itself with regard to residency -- it failed to anticipate review standards!

Your audit control No. 166 is a 1986 loan to a Petersburg couple. All of the application data, and normal file documents, support the fact that they were and are Petersburg residents. However, there is a stray undated note in the file which bears a Washington State address and

 FAX TRANSMITTAL MEMO
 TO: *Karl Oles*
 DEPT: _____ FAX #: *463-3043*
 FROM: *E. Crane - BUREAU 271-2000*

NO. OF PAGES

Randy Welker, Legislative Auditor
April 29, 1991
Page 2

phone number, whose existence your auditor regarded as a basis for a "question." (That address is not, and never has been, CFA's address of record for these borrowers). I am personally offended by cryptic, undated, unexplained, or incomplete material in a loan file and do not take issue with your auditor's approach; however, it troubles me that these circumstances fall under the caption of "questionable loans."

Among the 26 loans listed, there are considerable variations in the kinds of "questions," so I would not necessarily assert that the foregoing two are typical. Still, the fact is that most of the eyebrows were raised by "unanswered questions" rather than by "questionable loans"! I am wondering if you might consider issuing a supplement or addendum to your April 27 report which would provide some context for the caption in question and/or which would emphasize the rather rigorous standards used to determine "... whether substantial questionable situations remained unanswered ..."?

RWC:dmv

RECEIVED APR 29 1991

STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

MEMORANDUM

TO: The Honorable Fred Zharoff
Alaska State Senate

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 27, 1991

RE: Alaska Commercial Fish and Agriculture Bank

In response to your request and with the approval of the Chairman of the Legislative Budget and Audit Committee, we reviewed the Alaska Commercial Fishing and Agriculture Bank's (CFAB) compliance with residency requirements.

Under AS 44.81.210(a)(1), CFAB is authorized to make loans only to Alaska residents and to companies owned by Alaskans. Alaska Statute 44.81.210(a)(23) and 44.81.210(c) provide narrow exceptions for protection-of-collateral loans and shore-based Alaskan processors, respectively. However, this chapter does not define the term "resident."

CFAB's credit policy also does not define residency, although it does state that borrowers must have been Alaska residents for at least one year prior to obtaining a loan. This credit policy requires applicants to offer evidence of residency including drivers license, real property ownership, voter registration, income taxes, Permanent Fund dividend status, and sport fishing/hunting license. Absent contradictory factors or matters suggesting further investigation, CFAB's policy is to accept all such representations at face value if they are certified as correct by the applicant. Questionable situations should be reviewed and reported in a memorandum which documents the evidence considered.

We made a random selection of 421 loans from CFAB's April 1991 portfolio of 569 loans. We reviewed the documents contained in each file at the time of loan origination. As there is no definition of an Alaska resident provided by the statute, we accepted CFAB's credit policy as the standard upon which to judge each applicant.

This was a documentation review not a fraud investigation; whether an applicant was or was not in fact an Alaska resident cannot be unequivocally determined solely by a documentation review. We judged each application as to whether substantial questionable situations remained unanswered by the file documentation. Our results were as follows.

Questions about the applicant's residency remained in 26 (6%) of the 421 loans reviewed. Although not a 100% review, our random sample allows us to make a statistical conclusion that we are 99% confident that the total percentage of questionable files in the population is less than 8%.

QUESTIONABLE LOANS by Year of Origination		
Year	Number	Original Loan Amount
1982	3	\$ 223,000
1983	1	172,500
1984	1	159,000
1985	0	-0-
1986	1	54,800
1987	0	-0-
1988	3	146,400
1989	3	214,100
1990	9	492,802
1991	5	126,200
Total	26	\$1,588,802

While the above review considered residency at the date of loan origination, we also tabulated current mailing addresses from CFAB, from the Commercial Fishing Entry Commission, and from a subscription list of the *Alaska Commercial Fisherman*. Note that neither the statutes nor CFAB's credit policy require Alaska residency after the date of the loan. While not all CFAB borrowers were listed by the Commercial Fishing Entry Commission or the *Alaska Commercial Fisherman*, the majority were included. The borrower name match using the first and last names and a middle initial were possible for the CFAB and the Commercial Fishing Entry Commission records. The *Alaska Commercial Fisherman* subscription list did not provide middle initials, therefore, matching names is less conclusive. CFAB borrower mailing addresses for each data base were as follows:

CFAB Borrowers' Addresses per Mailing List of:	Alaska Address
Alaska Commercial Fish and Agriculture Bank	99%
Commercial Fishing Entry Commission	100%
<i>Alaska Commercial Fisherman</i>	97%

April 27, 1991

In our review of the 421 loan files, we found that CFAB's current mailing addresses were supported by, or at least not contradicted by, recent correspondence.

If we can be of any further assistance, please contact me.

cc: Representative Ron Larson, Chairman
Legislative Budget and Audit Committee

Members of the Legislative Budget
and Audit Committee

Mr. Edward E. Crane, President
Alaska Commercial Fishing and Agriculture Bank

PHONE MEMO	TO	Doug	DATE	4/4	TIME	9:25	AM
	FROM	John Lindauer	AREA CODE		NO.	562-4684	
	OF	All Rural Newspapers	EXT.				
	MESSAGE	If SB93 is considered would like to be informed so can testify. "Heavy duty editorials on this bill"					
			SIGNED	RT			
PHONED	<input checked="" type="checkbox"/>	CALL BACK	<input checked="" type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>
		WILL CALL AGAIN	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>	URGENT	<input type="checkbox"/>