and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS:

Quarterly Report. At the close of business on September 30, 1989, the 269 state-chartered banks of deposit with 1,657 branches had total assets of $99.4 billion, an increase of $5.9 billion or 6.2% from September 30, 1988. During this period, there was a net decrease of three banks and an increase of 24 branches. The 269 California state-chartered banks had aggregate earnings of $821 million for the first nine months of 1989, resulting in a return on assets of 1.1% and a return on equity of 16.7%. The number of unprofitable banks for the period was 19, or 7% of the 269 state-chartered banks.

Fiduciary assets of the 36 trust departments of state-chartered banks, one title insurance company, and 19 non-deposit trust companies totalled $136 billion. The assets of 103 agencies and branches of foreign banking corporations with 123 offices were $76.7 billion.

"Extraordinary Situation" Closing. The October 17 earthquake in the San Francisco Bay area forced a number of banks to close some of their offices. By law, they are unable to close unless an "extraordinary situation" exists. The Financial Code covers this situation by authorizing the Superintendent of Banks to issue a proclamation permitting the banks to close. In conjunction with the proclamation, the Superintendent requested that the state banks review their policies and adopt an approach of leniency and forebearance concerning borrowers whose homes and businesses may have suffered damage from the quake, or whose income may have suffered from employment interruption which could impair their ability to meet their obligations. In addition, the Superintendent requested that consideration be given to expediting the granting of loans to help rebuild the homes and businesses of these borrowers, as state banks have done in previous disasters of this type.

Congressional Report on State-Chartered Banks. On October 17, Superintendent Gilleran reported to the U.S. Senate Committee on Banking, Housing, and Urban Affairs on the condition of state-chartered banks in California. The Superintendent attributed part of California's success in avoiding banking problems encountered in other states to the strength and diversity of California's economy. According to the Superintendent, downturns in any one sector of California's economy tend not to affect the overall health of California banks, as in states where the economies are dependent on fewer industries.

The Superintendent reported that California's experience with expanded powers given state-chartered banks has been positive because these powers have been exercised conservatively and are carefully supervised. According to the Superintendent, the SBD has operated under an informal arrangement with the FDIC and Federal Reserve Board to conduct alternate-year examinations of non-problem banks. Other banks are examined by both the state and federal agencies every year, either separately or through a joint examination. During 1988, over 91% of all state-chartered banks were examined by one of the regulatory agencies and, by itself, the SBD examined over 64% of its banks, including all problem banks and statutory year banks. The Superintendent stated that in 1989, despite a reduced presence of the FDIC in California banks, examination coverage will extend to all problem banks and statutory year banks.

Superintendent Gilleran reported that he is optimistic about California banks remaining profitable and in satisfactory condition, and believes the SBD is well prepared to supervise and regulate the banking industry in a manner that will promote public confidence in the health of the industry.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 89-90:

AB 643 (Calderon) would have required financial institutions to provide handicap access to automated teller machines. This bill died in committee.

AB 1024 (Calderon) would have required the Department to conduct a survey on interstate banking, and report to the legislature by June 30, 1990 on the identities of California financial institutions which maintain branches in other states, California financial institutions owned by foreign entities, and financial institutions which do not meet the federal definition of "bank" that maintain home offices or branches in California. This bill died in committee.

SB 476 (Robbins) would extend the requirement that banks disclose information regarding consumer bank account charges to include certificate of deposit accounts. This bill is pending in the Assembly Finance and Insurance Committee.

AB 2521 (Johnston and Vuich), the California Bankers Association's bill, would have repealed the entire existing Banking Code and replaced it with 468 new sections of code. This bill died in committee. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 1 and Vol. 9, No. 1 (Winter 1989) pp. 70-71 for additional information on this bill.)

AB 244 (Calderon) would require financial institutions operating automated teller machines outside or away from their premises to comply with certain lighting, landscaping, and location requirements. This bill is pending in the Senate Banking and Commerce Committee.

SB 988 (Beverly) would have expanded the exemption of specified financial institutions from real estate licensure, and from certain provisions prohibiting taking unconscionable advantage of owners of real property in foreclosure, to include bank subsidiaries, bank holding companies and their subsidiaries, and savings banks and their subsidiaries, among other institutions. This bill died in committee.

DEPARTMENT OF CORPORATIONS

Commissioner: Christine W. Bender
(916) 445-7205
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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashiers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

MAJOR PROJECTS:

Department Relocates to Permanent Offices. On November 20, the Department relocated its Los Angeles office to permanent offices at 3700 Wilshire Boulevard. The Department had been operating out of temporary offices since April, when a fire broke out in its former headquarters and asbestos contamination was subsequently found. The new mailing address is: Department of Corporations, 3700 Wilshire Blvd., 6th Floor, Los Angeles, CA 90010. The Department's main telephone number is (213) 736-2741; the Health Care Service Plan Matters number is (213) 736-3131; the Financial Services number is (213) 736-3694; the Securities Complaints number is (213) 736-2520; and the Securities General Information number is (213) 736-3015.

Department Examined for Role in Lincoln Savings and Loan Collapse. The Department is being investigated for its role in the collapse of the Irvine-based Lincoln Savings and Loan Association. The Department has been sued in a class action on behalf of customers who invested in $250 million worth of junk bonds approved by the Department for sale by Lincoln's parent company, American Continental Corporation. (*See infra* agency report on DEPARTMENT OF SAVINGS AND LOAN and CRLR Vol. 9, No. 4 (Fall 1989) p. 100 for background information.) The lawsuit alleges that "at the urging of defendant law firms," the Department of Corporations approved Lincoln owner Charles H. Keating's application to sell $250 million in unsecured bonds to Lincoln depositors. Furthermore, the lawsuit accuses former Department Commissioner Franklin Tom of approving the bond sale with knowledge that the company was on shaky financial ground. Tom left his state post in 1987 and joined the law firm of Parker, Milliken, Clark, O'Hara & Samuelian, one of the named defendants in the lawsuit. Among others, the California Fair Political Practices Commission is examining whether any laws were broken by Tom or his successor, present Commissioner Christine Bender.

Enforcement. Within the last year, the membership in the Greater San Diego Health Plan (GSDHP) dwindled from 140,000 to 97,000 as GSDHP was overcome by financial difficulties due to failing expansion plans. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 90 and Vol. 9, No. 3 (Summer 1989) p. 79 for background information.) In response to a lawsuit brought by the Department, GSDHP was sold on September 15 to a joint venture of Aetna Life Insurance Company and seven hospital groups, as part of a court-ordered agreement to ensure continued care for the failing health plan's remaining members.

The 97,000 members of GSDHP were moved to the Aetna Choice Healthcare Plan (ACHP). The sales agreement provides that ACHP will pay GSDHP $50 for every member who stays with ACHP through January 15, 1990. All creditor claims against GSDHP will be handled through bankruptcy court. As this transition is taking place, section 1379 of the Knox-Keene Act protects enrollees of GSDHP from the claims of medical care providers who have contracted with the plan to provide services. If an enrollee has received a bill from a provider, the enrollee should contact GSDHP to determine who is responsible for payment.

On November 14, Commissioner Bender revoked the license of the San Diego County-based United States Health Plans to act as a health care service plan. Department officials said that the revocation was instituted for fourteen violations of state codes, including improper attempts to exclude health plan members from treatment for birth defects, AIDS, or AIDS-related disorders, and unsound fiscal operations. The revocation came in response to complaints filed before 1987 and followed five days of administrative hearings by the Department.

In response to lawsuits brought by the Department, Los Angeles Superior

Court Judge Dzintra Janavs issued preliminary injunctions against investment company Inversiones California Corporation and its officers (Inversiones) on October 24, and against American Investments and Financial Group Corporation (AIFGC) on September 19.

Inversiones used advertisements in Hispanic newspapers, television stations, and radio stations, as well as brochures distributed throughout Hispanic communities, to lure unsuspecting investors. Inversiones guaranteed a 20-24% rate of return on their investment. At least 47 investors invested more than $400,000 in the company. The injunction forbids the defendants from participation in the offer and sale of any securities unless qualified by the Commissioner and from transferring or using any money or property obtained by Inversiones.

AIFGC advertised in Hispanic newspapers and on Hispanic television stations, promising 22% interest on certain notes and trust deeds. This scheme affected over 1,000 investors who invested nearly $11 million. A court appointed receiver, Gilbert Vasquez, is presently reconstructing the books and records and locating properties and assets belonging to the company.

On October 24, the Commissioner ordered the United Express Money Order Company of Long Beach to discontinue business. This order followed an examination conducted by the Department in which a shortage of $790,000 in the company's trust account was discovered. The shortage is alleged to have been caused by the failure of twelve agents (previously terminated) to remit funds from money order sales to United Express. The Commissioner also ordered the Queen City Bank, Bixby Knolls Office in Long Beach, to discontinue payment of any funds to clear these money orders. As a result, some United Express money orders will not be honored immediately. The Department intends to seek a court-appointed receiver to oversee the affairs of United Express, and to marshall its assets in order to make distributions to holders of dishonored money orders.

On September 21, the Department issued a desist and refrain order to ITT Financial Services, which is licensed by the Department as a personal property broker, commercial finance lender, and a consumer finance lender. The order stems from a comprehensive investigation and examination into ITT's loan practices conducted by the Department in conjunction with the state Attorney General and the Alameda County District Attorney. The order was issued as part of a settlement in which ITT denied any wrongdoing. The settlement resolved the Commissioner's claims that ITT has committed numerous violations over the past several years, including false advertising and insurance packing, and has victimized thousands of citizens per year.

On September 20, the Department settled its suit against First Allied Mortgage Corporation (FAMCO). (See CRLR Vol. 9, No. 1 (Winter 1989) p. 72 for background information.) The suit was brought for FAMCO's alleged violations of the Holden Act. The Commissioner alleged that FAMCO had engaged in a pattern of discriminatory mortgage lending practices. As part of the settlement, FAMCO—without admitting or denying the allegations—has agreed to pay $436,000 to the state. Much of this money will be used as reimbursement to the state for the costs of pursuing this investigation and lawsuit; however, a substantial amount will be contributed to the NHS Foundation in Oakland, which makes low-cost housing loans to the disadvantaged.

Proposed Regulatory Changes to Implement Medicare Program. In November, the Commissioner published notice of her intent to amend and adopt regulations under the Knox-Keene Health Care Service Plan Act of 1975 to conform to the federal Omnibus Budget Reconciliation Act of 1987 and the federal Medicare Catastrophic Coverage Acct of 1988, both of which amended the federal Medicare program.

The Commissioner proposes to amend existing sections 1300.63.50, 1300.67.51, 1300.67.52, Title 10 of the CCR, to reflect changes in the benefit structure of the federal Medicare program. Existing section 1300.64.51 will be amended to preclude a health care service plan (HCSP) from using a "buyer's guide" which does not accurately outline current Medicare benefits.

Existing section 1300.67.51(b)(10)(A), regarding the permissible exclusion for routine foot care, would be amended to clarify that such care may not be excluded from the Medicare supplement contract when such care is being covered in part as a Medicare benefit.

The phrase "or any other plan organized and operated exclusively as a health maintenance organization, staff model, group practice model, or individual practice association model" will be deleted from all existing Medicare supplement contract regulations in which it appears (sections 1300.64.50, 1300.64.51, 1300.67.50, 1300.67.51, and 1300.67.53.). This phrase is now thought to be inconsistent with the statute authorizing the Commissioner to set minimum benefit standards for Medicare supplement contracts. The proposed deletion will clarify that non-federally qualified health maintenance organizations offering Medicare supplement contracts are subject to the regulations governing Medicare supplement contracts adopted by the Commissioner under the Knox-Keene Act.

To comply with new mandates regarding the reporting of loss ratios, the Commissioner proposes to (1) amend existing section 1300.67.50 to limit the prepaid or periodic charge calculation to no longer than one year; (2) adopt in substance the reporting form developed by the National Association of Insurance Commissioners (NAIC); and (3) amend section 1300.67.53 to reflect the actual ratio of benefits provided to the cost of health care services.

The Commissioner also proposes to adopt the following new sections: section 1300.67.54 will require HCSP contracts to maintain data regarding the approval status of their Medicare supplement contracts and will require the annual filing of that data in a prescribed format. Section 1300.67.55 will expressly prohibit existing Medicare supplement contracts from duplicating benefits provided by Medicare. Section 1300.67.56 will require HCSPs to notify subscribers of benefit modifications and prepaid and periodic charge adjustments due to prescribed revisions of the Medicare program. Section 1300.67.56 also will require HCSPs to file with the Commissioner appropriate prepaid or periodic charge adjustments and appropriate contract amendments needed to eliminate benefit duplications with Medicare. Section 1300.67.57 will set forth the format of the notice required by section 1300.67.56. Section 1300.67.58 will set forth requirements for the claim form for participating physicians and suppliers. Finally, section 1300.67.59 will set out the format for reporting loss ratio experiences.

The Department accepted comments on these proposed regulatory changes

until January 19.

Proposed HCSP Quality Assurance Guidelines. The Commissioner also proposes to amend section 1300.70, Title 10 of the CCR, to establish mandatory requirements governing the structure, elements, and implementation of internal quality of care review systems for HCSPs.

The proposed rule will require HCSPs to have a written quality assurance plan which describes the goals, objectives, and organization of the program. The written plan is required to evidence that the HCSP has assumed ultimate responsibility for quality assurance activities, although quality assurance responsibilities are permitted to be delegated within the plan or to a contracting provider. In the event quality assurance responsibilities are delegated, the delegated group must maintain records of its activities and report to the HCSP's governing body at least quarterly. The proposed regulation sets forth specific requirements for quality assurance activities which are delegated to a participating provider medical group. Specific requirements are also set forth for plans having capitation or risk-sharing contracts. The proposed regulation will require that the implementation of a plan's quality assurance program be supervised by a designated physician, or in the case of a specialized plan, a licensed professional provider.

The proposed regulation sets forth the factors upon which the Department will focus in assessing a HCSP's quality assurance program. It will require that a HCSP's quality assurance program address service elements including accessibility, availability, continuity of care, and utilization of services. Plans will be required to have a mechanism which monitors specified factors to oversee the quality of care provided in an inpatient setting.

The Commissioner accepted comments on these proposed amendments until January 19.

Regulatory Changes Approved. The Office of Administrative Law (OAL) recently approved the Department's amendment to section 260.140.84, Chapter 3, Title 10 of the CCR, regarding investment company expense limitations. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 79 for detailed background information.) This amendment became effective on September 21.

LEGISLATION:

AB 1929 (Epple) permits a listed corporation, as defined, to adopt provisions to its articles of incorporation or bylaws with the approval of the corporation's outstanding shares, as specified, to divide the board of directors into two or three classes to serve for terms of two or three years, respectively, or to eliminate cumulative voting, or both. Further, the bill provides that a member of a classified board of directors may not be removed if the votes cast against the removal of the director or not consenting in writing to the removal would be sufficient to elect the director if voted cumulatively, under certain conditions. This bill was signed by the Governor on September 26 (Chapter 876, Statutes of 1989).

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 91-92:

AB 2259 (Bentley), which would authorize a parent company to merge into its subsidiary corporation, is pending in the Assembly Finance and Insurance Committee.

AB 2499 (Wright) would have authorized licensed escrow agents who meet prescribed financial criteria to use the title "security escrow company." This bill would also have authorized the Commissioner to define and determine liquid assets for purposes of these criteria. This bill died in committee.

SB 503 (Stirling) would permit the director of a corporation, in performing his/her duties as a director in good faith, to consider and act in the best interests of the public as well as in the best interests of the corporation and its shareholders. This bill is pending in the Assembly Judiciary Committee.

AB 10 (Hauser), which would have created the California Health Insurance Program, died in committee.

AB 657 (Floyd), which would have permitted the Commissioner to refuse to issue a permit for qualification of securities in a recapitalization or reorganization unless its issuance is fair, just, equitable, and in the public interest, died in committee.

AB 1125 (Chandler), which would have specified that a director of a nonprofit mutual benefit corporation is required to perform his/her duties in a manner the director believes to be in the best interests of the members of the corporation, died in committee.

AB 1666 (Wright), which would exempt specified transactions from qualification under the Corporate Securities Law of 1968, is pending in the Senate Banking and Commerce Committee.

SB 526 (Russell), which would have increased the time period for filing an application with the Commissioner to qualify any security for which a registration statement has been filed under the Securities Act of 1933, died in committee.

SB 1444 (Boatwright), which would have authorized the merger of corporations and limited partnerships, setting forth the procedure to effectuate the merger and specifying the effect of the merger on the creditors of the entities involved in the merger, died in committee.

DEPARTMENT OF INSURANCE

Commissioner: Roxani Gillespie
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Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Codes sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,450 insurance companies which carry premiums of approximately $53 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

(1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing