

Client Memorandum

## **Preparing for a Potential Gold Confiscation**

by George R. Cooper, J.D.

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We would like to thank the Denver Public Library, the American Numismatic Association Library, and the Committee for Monetary Research and Education (Elizabeth Currier, Executive Director) for their kind assistance in gathering the research for this memorandum.

Client Note:

Gold confiscation remains the subject of much debate. We view confiscation as a possibility, rather than a probability, and see pre-1933 gold coins as an important hedge for those interested in addressing those concerns within their gold holdings. This memorandum documents the special treatment accorded pre-1933 gold coins under U.S. law -- a chronicle that began in 1933 when the newly elected Franklin Delano Roosevelt issued a presidential order confiscating gold bullion followed by an additional order exempting gold coins "having a recognized special value to collectors of rare and unusual coin." A subsequent Treasury Department regulation (1954), as shown in this memorandum, broadened that definition to include all gold coins minted before 1933 -- a classification which clarified the exemption and established precedent for similar treatment in the event of a future of gold confiscation.

It should be emphasized that there is a whole genre of pre-1933 gold coins that still can be acquired at moderate premiums over contemporary bullion coins. These items track the gold price and enjoy strong global liquidity. Over the years, and particularly since the beginning of gold's bull market in 2002, our firm has placed tens of thousands of these items with concerned gold owners.

Last of all, we do not in any way intend this to be a formal legal opinion, but rather an overview to help you form your own opinion on whether or not pre-1933 gold coins should be included in your hedging plan. Furthermore, we are not stating categorically that pre-1933 gold coins would survive confiscation, nor are we stating that another confiscation is likely or imminent.

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"Speaking at the FT [Financial Times] Silver conference in London yesterday, lead-off speaker John Levin, HSBC Bank's Managing Director, Global Metals and Trading (HSBC is one of the world's top precious metals traders and its vaults in the U.S. and Europe hold huge holdings of gold and silver bullion) recounted conversations with some of the U.S.'s top asset managers controlling massive amounts of capital asking if HSBC had the capacity in its vaults to store major gold purchases. On being told that the bank's U.S. vaults had sufficient space available he was told that they did not want their gold stored in the U.S.A. but preferably in Europe because they feared that at some stage the U.S. Administration might follow the path set by Franklin D. Roosevelt in 1933 and confiscate all U.S. gold holdings as part of the country's strategy in dealing with the nation's economic problems."

Larry Williams, *MineWeb*

"At any rate, I'm personally torn between putting all my assets into bullion gold coins or leaving half in gold and half of my assets in US dollars. In their demand to making Fed notes the only legal tender money, I believe the Fed (and the government) would stoop to any trick or law or machination to ensure that Americans must accept Fed notes as the only legal tender money. The government (Congress?) could pass a law outlawing any transactions in gold or silver or any precious metal. The government could halt the trading of gold or gold ETFs. Or there might be a dozen tricks that the government could use that would outlaw the use of gold as legal tender."

Richard Russell, *Dow Theory Letters*

"But in 1933, gold was taken away from Americans. The government paid them \$25 and after, they revalued the gold to \$35. So, basically what the government can do once again, and that is a possibility. They could artificially depress, manipulate the price down and then say 'Gold is illegal to be held. We have to collect all the gold from the citizens.' Say if they manipulated the price down to \$1,000. They could collect it at \$1,000 and then revalue to \$10,000."

Marc Faber, Gloom, *Doom, Boom Report*

"[T]he cheapest source and perhaps the largest source of gold a nation has is the gold of its own citizens. In such times of monetary need we have no doubt that, out of concern for the nation's financial security, the confiscation of their citizen's gold will happen."

Julian Phillips, *Gold Forecaster*

"I think it's possible for both gold and silver [to be confiscated]; and I know many people who are worried about it. I remember asking panelists on the Gold Commission for assurances that the federal government would never again resort to confiscating gold, and nobody would commit to it. It may seem a bit far-fetched today, but we should remember that governments always assert emergency 'powers' during economic crises, as our own government demonstrated in the 1930s. Few Americans understand the true causes of the Depression even today, and still believe FDR's government programs magically cured the economy. So we should understand that public anger in the event of another economic depression may well be misdirected, and gold could be made a scapegoat."

Congressman Ron Paul

"I am afraid that one day the government will indeed call gold in. Gold bullion will be subject to confiscation. This is one big advantage to numismatic gold, such as the double eagles. It is an idiosyncrasy of governments that although they may prohibit ownership of gold in any form, they are reluctant to touch collections of numismatic gold coins. Today, there are some forty-nine countries which forbid ownership of gold by their citizens, but do allow holding gold coins for numismatic purposes. Even Soviet Union and Eastern European countries legally tolerated the acquisition of numismatic gold coins. So these are the only gold holdings that could be kept in your safe deposit box without any fear of confiscation."

Dr. Franz Pick, *The Triumph of Gold*, 1970

## Questions and Answers

This Q& A is an overview. For a more thorough treatment of this subject matter, we recommend a complete reading of the attached appendices which include a full legal chronology and related documents.

### **Question: Who was Dr. Franz Pick and why quote him?**

**Answer:** Dr. Pick was a famous Austrian economist and currency expert who passed away in the 1980s. His work is important to us with respect to gold confiscation because he survived both Nazi and Communist dictatorships as a citizen in Eastern Europe -- neither of these governments, as you probably already know, had a favorable disposition towards private gold ownership. "The Triumph of Gold" was his most notable work and remains must reading for any serious student of gold and economic history. As you can see from the quote above, based on his life experience and reading of modern economic history, he thought gold confiscation was an option all too readily embraced by governments. It is interesting to note the group of notable commentators above who expressed a similar view in the contemporary era.

### **Q. Is Dr. Pick correct about the likelihood that collectible gold coins would be exempted from a confiscation?**

**A.** Historically, as this memorandum demonstrates, collectible gold coins have been treated differently under U.S. law than bullion. As Dr. Pick says, "It is an idiosyncrasy of governments that although they may prohibit ownership of gold in any form, they are reluctant to touch collections of numismatic gold coins." In the United States there are some very particular reasons, based on Constitutional principles, why it exempted certain items between 1933 when the federal government confiscated gold and 1975 when it lifted the ban. It all comes down to a matter of definition.

### **Q. Doesn't "collectible gold" translate to a coin that sells for prices far above -- often multiples of -- the gold content?**

**A.** Surprisingly not. Few people know that there is a whole genre of so-called "collectible gold" coins which can be obtained at moderate premiums over contemporary gold coins. These items are very liquid internationally and track the gold price, but are technically defined as "collector items" in various federal government rulings stretching back to the 1930s and 1950s. (This subject is treated in more detail further on.)

### **Q. Why do governments have such an intense dislike for gold?**

**A.** "The modern mind," quipped philosopher Joseph Schumpeter, "dislikes gold because it blurts out unpleasant truths." Those unpleasant truths usually have to do with a currency debasement or an economy about to go into the inflationary or deflationary tank. Essentially by buying gold, the citizen is voting against government economic policy with his or her checkbook. Most of the confiscations that have occurred in history were implemented to stop capital flight and bank runs in times of economic hardship. The best known is the U.S. seizure in 1933, but Great Britain also banned gold during a run on the pound in 1966, and Australia banned it in 1959. Liberal democracies, we can gather from this, are as vulnerable to draconian capital controls in times of stress as the most strident dictatorships.

### **Q: Why did the U.S. government call in the gold in 1933?**

**A:** In 1933, the economic problems became severe enough to threaten the viability of the entire banking system. At the depths of the Depression, over 10,000 banks had closed and people were turning in their paper money for gold coins, and then putting those coins in safe deposit boxes and in the drawer at home. Big investors, perhaps reading the handwriting on the wall, were exporting bulk amounts of gold to Europe in bullion form. Dr. Walker Todd quotes a Treasury report in early 1933 which stated "Gold held in private hoards serves no useful purpose under present circumstances. When added to the stock of Federal reserve banks it serves as a basis for currency and credit. This further strengthening of the banking structure adds to its power of service toward recovery." (See Appendix I.)

In order to stop what amounted to a run on the dollar as people withdrew their savings from the banks and converted it to gold, President Roosevelt issued his now famous Executive Order (see Appendix II) which confiscated gold held by American citizens. From 1933 until 1975 it was illegal for U.S. citizens to own bullion gold. Citizens could, however, own gold in the form of pre-1933 gold coins.

There is another very important point to consider why Roosevelt took the action he did. Under the auspices of the “economic emergency”, i.e. the Depression, he did not want any competition for the dollar which he felt should be positioned as the international reserve currency. He knew that if he could set the price of gold instead of letting the market set the price, then he could go about fulfilling his political agenda without worrying about an attack on the dollar.

There have been stories told about Roosevelt and then Treasury Secretary Andrew Mellon setting the gold price over a poached egg breakfast every morning--something which makes the statist heart sing but does little for those of us who champion free markets and an auxiliary role for the government. When gold trades freely, citizens can vote on economic policy simply by purchasing gold. This is why, even under the current system of free-floating currencies, former Federal Reserve chairman Alan Greenspan professes to have watched the gold price so closely. It is an indicator how the financial community is receiving the Board’s monetary policies.

**Q. What are the chances of a gold confiscation today?**

**A.** Of course, that is the ultimate question and the subject of much debate and conjecture. Google “gold seizure” and among the many entries posted you get a pretty even split between those who believe it could happen again and those who do not. The fact of the matter is that no one knows. The nature of gold ownership is such that there is a lingering suspicion it *could* happen, but this is a conclusion each investor must reach on his or her own.

**Q. What was the actual mechanism of the 1933 gold confiscation?**

**A.** A series of Executive Orders was issued in early 1933 prohibiting private gold ownership (see Appendix II) and instituting a long list of other economic controls. Penalty for noncompliance was 10 years in prison and a \$10,000.00 fine -- a hefty fine for the time. The official gold price was \$20.67 per ounce. Once the gold was safely tucked away, Roosevelt set the price at \$35, cutting the government an immediate 69% profit on its holdings and devaluing all private dollar holdings by 60% (see Appendix III).

**Q. What was the outcome for those Americans who refused to obey Roosevelt’s executive order?**

**A.** Most turned in their gold, but there were two approaches by those refusing to obey the order. Some challenged the constitutionality of the law in the courts. They lost every case even though some cases dragged on for years. Others simply hid their gold. If they were caught, they faced the tough penalties mentioned above. Furthermore, it appears that there was not much to be gained by keeping gold bullion. There was no black market. There was no secondary market. As a citizen, you were effectively closed out of the gold market except, as previously mentioned, if you happened to own “rare and unusual” gold coins. (See Appendix II.)

**Q. What is the best course of action for people to take in the event of another gold confiscation?**

**A.** Obeying the law should be first and foremost. It makes no sense to become a criminal when there are alternatives which are legal and still get the job of asset preservation accomplished. There is an old saying: Don’t get mad, get even. The way to get even is by beating them at their own game. You can structure your portfolio in the event of a confiscation down the road without incurring an onerous cost in so doing.

**Q. On what basis do you support your contention that pre-1933 gold coins are the best option for those concerned with a potential confiscation?**

**A.** There is a long history of legal precedent protecting collectors' coins dating from 1933 forward, beginning with language in Executive Order #6260 which exempts "gold coins having a recognized special value to collectors of rare and unusual coins." Most important to our clientele, however, was the broadening of the definition through Treasury regulations issued in 1954. Donald Hoppe provides an excellent synopsis of this expanded designation in his 1970 essay, "Investing in Gold Coins."

In it he says:

"In 1954, the Treasury Department recognized at last that the time had come to legitimize the numismatic gold market. Consequently, an amendment was made to the Gold regulations, to the effect that all gold coins minted prior to 1933 would subsequently be presumed to be rare and of recognized special value to collectors, without the necessity of further specific determinations by the Treasury."

In other words, all gold coins dated before 1933 would be automatically classified as collectors' items, regardless of how rare or unusual they were individually. A subsequent regulation in 1962 confirmed this distinction when it allowed for the importation of all pre-1933 gold coins as collectors' items. These two rulings removed any remaining ambiguity about what constituted rare and unusual items in Roosevelt's original executive order. Now, all gold coins dated prior to 1933 would fall under the definition of "rare and unusual."

**Note:** In Appendix IV, we include a comprehensive legal chronology from Henry Mark Holzer, J.D. (Ayn Rand's attorney) and extended and updated by George Cooper, J.D. from the research gathered for this memorandum.

**Q. How do you explain Roosevelt's exemption of coins defined as collectors' items?**

**A.** As a starting point, these items are protected under the Constitution's Fifth Amendment which states: "[N]or shall private property be taken for public use without just compensation." This is the well-known Eminent Domain Clause of the Constitution which the founding fathers felt to be an important inclusion. They knew all too well what happens when government is allowed to seize property without restriction. They had experienced these types of problems with respect to English sovereignty in the American colonies. What this means is that the individual can use the Eminent Domain Clause to extract a "fair" price from the government for coins that are subject to confiscation. "Fair" price connotes market price, in today's understanding, and not an artificially set price by the powers in Washington.

The Roosevelt administration probably envisioned countless lawsuits clogging the court system just to determine the value of someone's coin collection. The country was in a depression and its resources needed to be spent on reviving the economy and not on getting bogged down in litigation. So it was not really a matter of the government winning the battle (because the outcome had already been determined by the Eminent Domain Clause), but rather it was a question of how much it would have to pay. Government advisors knew this fact and probably advised Roosevelt accordingly. Thus, the amendment to his Executive Order was issued. (See Appendix II.)

Secondly, coins defined as collectibles represented a small fraction of the overall above-ground gold. Roosevelt was most concerned about flight capital and massive amounts of bullion being shipped out of the country by major players. Don't forget that the real goal in a confiscation is to curtail gold trading as a speculation against the currency and keep depositors from fleeing the banking system and other financial institutions.

By simply confiscating bullion, establishing price controls, and stemming the outward flow of gold bullion, the Roosevelt administration met its objectives. These so-called collectors' items were an annoyance more than anything else. It was easier all the way around to simply leave these items legal.

**Q. In the event of a gold confiscation, what price could a person expect to receive?**

**A.** Technically, the official government gold price today is \$42.22 per ounce (see Appendix IV) but practically speaking, for compliance purposes, the government would have to confiscate gold at something

closer to the current market price. Gold investors sometimes comment that they are not concerned with a confiscation because the government will offer fair value in paper currency for the metal. This was not the case in 1933, Roosevelt confiscated gold at \$20.67 an ounce. The administration then raised the price to \$35.

**Q. What items would be included in a future government confiscation?**

**A.** There is no way to accurately predict what might be included. However, if the government's goal is the same as it was in 1933, that is, to stem the flow of capital out of the financial system, the answer is fairly logical. They would want to target the gold products that serve as destinations for large pools of capital, as well as those that could be valued easily and broadly (limiting eminent domain push back). Products that possess these qualities include: Exchange traded funds, pool and storage accounts (allocated and unallocated), gold IRAs, bullion bars of all sizes, gold bullion coins like South African Kruggerands, U.S. Eagles, Canadian Maple Leafs, Austrian Philharmonics, and any other item that trades based on its gold value alone. Any call-in is likely to include any and all gold held overseas. In addition, silver would probably be called in as they wouldn't want to imprison gold only to let its best known side-kick run free (to that point, silver bullion was also confiscated in 1934). In short, the most logical course of action would be to target the largest, easiest to value areas of the precious metals market. In doing so, the government would achieve the greatest impact while applying the least amount of time, energy and resources.

**Q. What about rare numismatic items in the case of a confiscation?**

**A.** Very rare collector coins or “true” numismatics were exempted in 1933. Keep in mind though, that numismatics is a complicated and different market entirely from the more commonly traded items. True numismatics has to do with collectible, or rarity, value that far exceeds the gold content -- an area detached from the real gold market and should be approached by specialists who are very knowledgeable.

**Q. There are a number of gold firms that counsel their clients that the only true confiscation hedge is very rare coins that trade at values far in excess of their gold value. Is that true?**

**A.** David Ganz, an attorney who specializes in gold-related legal matters, says it best: "FDR's presidential seizure of gold specifically exempted rare and unusual coins. That didn't mean expensive, and it was not a synonym for pricey." In 1954, that primary criteria became the date 1933 and earlier, not the rarity, or rarity premium. The argument that a high priced coin is the only true confiscation hedge is believed to have been born from proposed regulation 26 CFR 1.6045-1 on page 647-648 of the Federal Register, Vol. 49, No. 3, 1/5/1984. In it, numismatic coins were defined as coins carrying premiums in excess of 15%. Bottom line, this proposed regulation never passed and is not part of the current law, and therefore has no bearing on what is defined as rare and unusual.

**Q. What about the old U.S. Twenty Dollar gold pieces as a confiscation hedge?**

**A.** Many Americans prefer to hold the pre-1933 U.S. \$20 gold pieces as a hedge against confiscation and we do not see this as a problem. However, the investor needs to know that the old Double Eagles carry substantially more premium than the European coins. In the end, we leave choices like this to the client.

**Q. Beyond the hedging aspect, are there additional advantages to owning pre-1933 gold coins?**

**A.** Typically the pre-1933 European gold coins track the gold price. However, there is the potential for a double-play profit, based on future scarcity value, that should not be overlooked. Over the years, there have been a number of occasions where the demand for pre-1933 gold coins forced premiums substantially higher. This occurred in the late 1990s when excessive demand because of the Asian Contagion and the ramp up to 2000 pushed the supply to its limits. It happened again at the height of the 2008-2009 financial crisis. If there were ever a gold confiscation, pre-1933 gold coins would be the only legal form of monetary gold ownership. In such a situation, the premium could react accordingly.

Attorney/author, Henry Mark Holzer, in his monograph “How Americans Lost Their Right to Own Gold and Became Criminals in the Process” (see Appendix IV) refers to an article in Barron's on page

9 which appeared May 31, 1971. Holzer states in footnote 3 to his work that:

“[T]he value of certain gold coins had increased substantially over the prior three years. For example, in May 1968, the U.S. ‘Double Eagle’ had been selling at a premium of about 45% over the actual gold content of the coin, the official rate then being \$35.00 per ounce. In May 1971, the premium was 69%. In May 1968, the German Mark piece had been selling at a 75% premium; in May 1971, the premium was 175%.”

**Q. What about liquidity?**

**A.** Pre-1933 gold coins are liquid nearly anywhere in the world.

**Q. Is gold ownership in the United States a “right” or a “privilege?”**

**A.** The following opinion was published in the Boston College International & Comparative Law Review. From the article entitled “State Attempts to Tax Sales of Gold Coin and Bullion in the United States: The Constitutional Implications,” we quote:

“The private ownership of gold is a privilege, not a right. Congress revoked the privilege of private ownership in 1933 and restored it in 1974. Congress could easily revoke the privilege again. In fact, at no time during this century has the U.S. government recognized the right of private gold ownership. The Trading with the Enemy Act, which President Roosevelt invoked in 1933 to restrict private gold transactions, remains law. The government could reactivate the machinery, which the Trading with the Enemy Act established, to implement gold confiscation.”  
5 Boston College Int’l & Comp. Law Review 287, 320 (1982).

(Also, please see Representative Ron Paul’s quote in the previous section, and Appendix V: Treasury Department Opinion Letter [2005] on Gold Confiscation, Press Release - Chris Powell, Gold Anti-Trust Action Committee)

**Q. What are USAGOLD's recommendations on portfolio allocation?**

**A.** If you believe a confiscation is possible, we recommend diversification of your gold holdings to include pre-1933 gold coins. How aggressive you diversify depends on your level of concern. At US-AGOLD, we believe in targeting this diversification by procuring the least expensive pre-1933 gold coins possible. Our goal is simple: Get the absolute most gold for your money while constructing your portfolio to weather a range of possibilities and uncertainties. Pre-1933 gold coins are a "diversification within a diversification," and by minimizing the cost of acquisition, you end up with a gold portfolio that moves directly with the gold price, while providing the extra layer of protection you are seeking.

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**Appendix I**

**From Constitutional Republic to Corporate State: The Federal Reserve Board, 1931-34**

by Dr. Walker F. Todd, October 1995

[The following was excerpted from Monograph 51 with the aforementioned title and is reprinted with permission of the Committee for Monetary Research and Education, Inc., 10004 Greenwood Court, Charlotte, North Carolina 28215.]

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Another telling indictment of the legal, as distinct from the political, basis for the emergency proclamation that the Board's general counsel prepared was the following exchange between Roosevelt and Senator Glass in Roosevelt's hotel room at 11:30 on the night before the inauguration:

[Roosevelt]: [Hoover says that the Board has asked him twice within the last three days to issue an emer-

gency proclamation, but I told him that the governors of the states can take care of bank closings.]

[Glass]: "Yes, I know."

[Roosevelt]: "The previous time [that the Board asked Hoover for the proclamation] I sent [incoming Treasury Secretary William] Woodin to [outgoing Treasury Secretary Ogden] Mills to tell him I would not give my approval to such a proclamation."

"

I see. What are you planning to do?" asked Glass.

"Planning to close them, of course," answered Roosevelt.

"You will have no authority to do that, no authority to issue any such proclamation," protested Glass. "It is highly questionable in my mind if you will even have the authority to close national banks—and there is no question, at all, that you, even as President, will lack the authority to close banks chartered by the states."

"I will have that authority," argued Roosevelt. "Under the Enemy Trading Act, passed during the World War and never rescinded by Congress, I, as President, will have the authority to issue such an emergency proclamation 'for the purpose,' as the Act says, 'of limiting the use of coin and currency to necessary purposes.'"

"It is my understanding that President Hoover explored that avenue a year or two ago and again during recent days," said Glass. "Likewise, it is my understanding that the Attorney General informed him that it was highly questionable if, even under this act, though it has never been rescinded by Congress, the President has any such authority. Highly questionable because the likelihood is the act was dead with the signing of the Peace Treaty, if not before."

"My advice is precisely the opposite."

"Then you've got some expedient advice," returned Glass... [Glass then argued that the courts would find the proclamation unconstitutional because it would require the unwarranted closing of solvent banks and because, even if all the banks were known to be insolvent,] "I am sure such a proclamation could not legally include banks chartered by the states." [Wyatt's written opinion of December 5, 1932, argued just the contrary, that the federal government could close state-chartered banks.]

"Nevertheless," declared Roosevelt, "I am going to issue such a proclamation."

Convinced though he [Glass] was there had been no need for closing the banks [Glass believed that only insolvent banks could not withstand the runs of February- March 1933] and certain, too, the President was without constitutional authority for his act, those convictions were lost causes. (Smith and Beasley [1972], pp. 341- 343)

Hoover writes in his memoirs that if Roosevelt really believed what he told Senator Glass late on March 3, then he should have joined Hoover in issuing a proclamation limiting withdrawals and issuing the 80 percent guarantee of deposits to avoid closing the banks: "But closing the banks would be a sign the country was in the ditch. It was the American equivalent of the burning of the Reichstag to create 'an emergency'" (Hoover [1952], p. 214). However, as noted in the earlier discussion of the measures taken from the fall of 1931 onward, it was Governor Meyer and the Board's staff who led the way in finding reasons for proclaiming emergencies and for pushing forward the boldest emergency relief schemes, against the recalcitrance of Hoover, who went along with much that he should not have but retained to the end the capacity to discern excess where the Board apparently did not.

As is generally known, one of President Roosevelt's first official acts after taking office on Inauguration Day (Saturday, March 4, 1933), was to proclaim an emergency, 3-day, nationwide banking holiday, signed and effective Monday, March 6. Late in the preinaugural banking crisis, on March 3, the Federal Reserve Board and the New York Reserve Bank's Governor Harrison had agreed that the Board would issue an order closing all the Federal Reserve Banks. New York Governor Herbert Lehman, at the urging of

Governor Harrison, also agreed to proclaim an emergency bank holiday in New York, and a similar action was taken in Illinois. Thus, the Board had placed first Hoover and then Roosevelt in a position in which, as a practical matter, the president could not allow Monday to arrive without some kind of emergency proclamation (Pusey [1974], p. 237).

These extraordinary actions tended to intensify the crisis atmosphere. As Schlesinger writes:

Whether revolution was a real possibility or not, faith in a free system was plainly waning. Capitalism, it seemed to many, had spent its force; democracy could not rise to economic crisis. The only hope lay in governmental leadership of a power and will which representative institutions seemed impotent to produce. Some looked enviously on Moscow, others on Berlin and Rome.... (Schlesinger [1959], p. 3)

Senators Cutting (New Mexico), La Follette (Wisconsin), and Costigan (Colorado) urged Roosevelt to nationalize the administration, if not the ownership, of the banking system, but the president decided not to do so because of assurances of bankers' cooperation with his New Deal reform plans (ibid., p. 5). He limited his initiative in this respect to Federal control of the licensing procedure for reopening banks after the holiday. Representative Hamilton Fish of New York, after Roosevelt's first "fireside chat" on March 12, "proudly pronounced the new regime 'an American dictatorship based on the consent of the governed without any violation of individual liberty or human rights'" (ibid., p. 15). The text of that fireside chat, "relative to the banking situation," is printed in full in the Federal Reserve Bulletin ([1933], vol. 19, pp. 120-122), a circumstance that, in light of everything else that transpired then, causes one to wonder who actually drafted that text for Roosevelt.

The appearance of radical innovations, some of them at least mildly corporatist in nature, at the Federal Reserve Board during the first 6 months or so of the Roosevelt administration should not have been all that surprising in the context of contemporary Washington events. In any case, the Emergency Banking Act of March 9, 1933 was suggested to Roosevelt by a team of holdover Hoover administration advisers that included, from the Board, Walter Wyatt, E. A. Goldenweiser (the Board's director of research and statistics), and Governor Meyer. Wyatt and Hoover's treasury undersecretary, Arthur Ballantine, drafted the Emergency Banking Act, with Wyatt being particularly responsible for the National Bank Conservation Act (Title II of the Act) and the RFC preferred-stock-purchase program (Section 304 of the Act).

There followed a host of legislative initiatives, now retrospectively and collectively termed the First New Deal or the One Hundred Days, and many of those initiatives were begun or substantially modified by the recommendations of the Board. On March 24, 1933, the Emergency Banking Act was amended to authorize, for up to 1 year, reserve banks' loans to any non-member bank on "eligible" collateral under Section 13 of the Federal Reserve Act and, after inspection of collateral and "a thorough examination" of the applicant, to any non-member bank on ineligible collateral under the then-current version of Section 10(b) of the Act, which still required a finding of "unusual and exigent circumstances" by at least five governors of the Board (Board of Governors, Annual Report [1933], p. 266). The Treasury issued numerous regulations, licensing orders, and statements regarding the banks throughout the month of March, and most, if not all, of them were drafted or cleared for issuance by the Board's staff (see Federal Reserve Bulletin [1933], vol. 19, pp. 122-133). As evidence that the Board was slightly more enthusiastic than the reserve banks for compliance with the new order of things in Washington, the March 1933 Bulletin (ibid., pp. 130-131) reports that on March 8, the Board asked the reserve banks to prepare and forward a list of all persons who had withdrawn gold or gold certificates from the reserve banks or from member banks since February 1, 1933, "and who had not redeposited it in a bank on or before March 13, 1933," later extended to March 27. "The board also advised them [the reserve banks] that it had no objection to obtaining similar information from non-member banks and information regarding withdrawals prior to February 1" (ibid.).

What the Board and the Roosevelt administration intended to do with the information about gold withdrawals soon became evident. On April 5, 1933, President Roosevelt issued an executive order "forbidding the hoarding of gold coin, gold bullion and gold certificates." Willful violation of the order would cause a fine of up to \$10,000 or up to 10 years' imprisonment, the penalties for a Federal felony. "Hoarding" was defined as the withholding from the recognized and customary channels of trade of gold worth more than \$100 for individuals. The authority cited for that order, which a press statement issued by the

Treasury indicated "was in contemplation from the time of the passage of the Emergency Banking Act [March 9]" (ibid., pp. 213-214), included the same Trading with the Enemy Act of October 6, 1917 that Walter Wyatt held to be the basis for the president's emergency bank holiday proclamation on March 6. Indeed, the stated purpose of that emergency bank holiday proclamation had been "to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency" (ibid., p. 114). The Treasury's press statement continued as follows:

[W]hile many of our citizens voluntarily and helpfully turned in their gold [after March 8], there were others who did not so respond. In fairness, the conduct of all citizens with reference to gold should be the same in this emergency, and this is assured by the order. Gold held in private hoards serves no useful purpose under present circumstances. When added to the stock of the Federal Reserve banks it serves as a basis for currency and credit. This further strengthening of the banking structure adds to its power of service toward recovery. (Ibid., p. 215)

On April 20, 1933, operating under the authority of that same Trading with the Enemy Act, President Roosevelt issued an executive order making it a Federal felony to export gold or gold certificates, or to earmark domestic gold for foreign account, without a license from the Treasury. Foreshadowing the August 1971 events at Camp David that affected official U.S. gold transactions, this April 1933 proclamation marked the end of the U.S. gold standard for private international transactions. On April 29, the Treasury issued regulations governing domestic purchases of gold for industrial, professional, and artistic uses and the exportation of gold (ibid., pp. 266-269).

Pressed by political demands "for inflation," largely from "a few crackpot congress- men and senators. . . , a few businessmen and farm leaders organized under the title 'The Committee for the Nation,' and a couple of starry-eyed monetary experts," Roosevelt acceded to the demands of the inflationists on April 18 and 19 and decided to block private exports of gold before announcing his public acceptance of the inflationary provisions of Title III of the Agricultural Adjustment Act of May 12, 1933 (amended on May 27, 1933), sponsored by Senator Elmer Thomas of Oklahoma (Moley [1939], pp. 156-161; Federal Reserve Bulletin [1933], vol. 19, pp. 307-318, 333-338). Because the Thomas Amendment (Title III) passed over-whelmingly on April 28 in both houses of Congress, 64-21 in the Senate and 307- 86 in the House of Representatives, it is unclear that resistance by the Board could have been effective in preventing enactment of the amendment. However, Raymond Moley's narrative (the best published account of the Thomas Amendment) does not indicate that anyone from the Federal Reserve was present at the White House during the crucial debates on April 18 and 19 that persuaded Roosevelt to endorse the amendment.

Meyer's biography tends to confirm this version of events: After the banks began to reopen in mid-March, Meyer no longer went to the White House, asked permission to resign as governor of the Board on March 24, and finally left the Board on May 10 (Pusey [1974], pp. 238-241; Federal Reserve Bulletin [1933], vol. 19, p. 273). Moley later opined that Roosevelt, believing congressionally mandated monetary inflation to be inevitable, had concluded that he should endorse the Thomas Amendment in order "to circumvent uncontrolled inflation by Congress," but Budget Director Lewis Douglas declared, "Well, this is the end of Western civilization" (Moley [1939], pp. 160-161). At about this time at the Board, Floyd Harrison resigned as assistant to the governor on May 15; J. F. T. O'Connor was appointed comptroller of the currency on May 11 and became an ex-officio member of the Board; and Eugene R. Black, governor of the Federal Reserve Bank of Atlanta since 1928, was appointed governor of the Board, replacing Meyer on May 17, 1933 (Federal Reserve Bulletin [1933], vol. 19, p. 273).

The Thomas Amendment authorized the president to direct the secretary of the treasury to negotiate with the Board to permit the reserve banks to conduct open-market operations in U.S. Government obligations and to purchase up to \$3 billion of securities directly from the Treasury (all such transactions until then having been restricted by statute to the open market) during economic emergencies or to stabilize the dollar domestically or internationally. If the reserve banks refused to make the purchases requested, or if their open-market operations were inadequate, the president could authorize the Treasury to issue up to \$3 billion of inconvertible, legal-tender, "greenback" currency notes, to be retired over a 25-year schedule. The president was also authorized to issue a proclamation fixing the gold weight of the dollar at a ratio as much as 50 percent below the pre-1933 standard of \$20.67 per ounce of gold, in grains 90 percent fine. There was a silver purchase section (up to \$200 million) and, finally, an amendment

of Section 19 of the Federal Reserve Act to authorize the Board, by a vote of at least five members and with the president's approval, to increase or decrease reserve requirements if "an emergency exists by reason of credit expansion...." (Federal Reserve Bulletin [1933], vol. 19, pp. 317-318). On May 27, the Thomas Amendment was further amended to provide that all coins and currencies of the United States, including Federal Reserve notes, were legal tender; previously, those notes had only "lawful money" status, but they were convertible into gold before March 1933 (ibid., pp. 336-338). Congress passed a Joint Resolution, H. J. Res. 192, Public Resolution No. 73-10, on June 5, 1933, affirming this interpretation of the Thomas Amendment (ibid., p. 338.)

Reference works cited in this excerpt are as follows:

1. Smith, Rixey, and Norman Beasley. *Carter Glass: A Biography* (New York: Da Capo Press, 1972).
2. Hoover, Herbert. *The Great Depression: 1929-1941*, vol. 3 of *The Memoirs of Herbert Hoover* (New York: Macmillan Company, 1952).
3. Pusey, Merlo. *Eugene Meyer* (New York: Alfred A. Knopf, 1974).
4. Schlesinger, Arthur. *The Coming of the New Deal*, vol. 2 of *The Age of Roosevelt* (Boston: Houghton Mifflin Company/Riverside Press, 1959).
5. Board of Governors of the Federal Reserve System. *Federal Reserve Bulletins* (Washington, D.C.: Board of Governors, 1914-1992).
6. Board of Governors of the Federal Reserve System. *Annual Reports*. (Washington, D.C.: Board of Governors, 1914-1992).
7. Moley, Raymond. *After Seven Years* (New York: Harper & Brothers, 1939).

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## **APPENDIX II CHRONOLOGY OF DOCUMENTS RELATING TO GOLD CONFISCATION**

Applicable Federal Laws and Regulations From 1933 to 1974

### **A. Executive Order #6102 (April 5, 1933) Confiscating Gold**

I as President, do declare that the national emergency still exists; that the continued private hoarding of gold and silver by subjects of the United States poses a grave threat to peace, equal justice, and well-being of the United States; and that appropriate measures must be taken immediately to protect the interests of our people.

Therefore, pursuant to the above authority, I hereby proclaim that such gold and silver holdings are prohibited, and that all such coin, bullion or other possessions of gold and silver be tendered within fourteen days to agents of the Government of the United States for compensation at the official price, in the legal tender of the Government. All safe deposit boxes in banks or financial institutions have been sealed pending action in the due course of the law. All sales or purchases or movements of such gold and silver within the borders of the United States and its territories, and all foreign exchange transactions or movements of such metals across the border are hereby prohibited.

Your possession of these proscribed metals and/or your maintenance of a safe deposit box to store them is known to the government from bank and insurance records. Therefore, be advised that your vault box must remain sealed, and may only be opened in the presence of an agent of the Internal Revenue Service.

[Note: This document can be found in volume 2 of *The Public Papers and Addresses of Franklin D. Roosevelt* at 111-116.]

### **B. Executive Order #6260 (August 28, 1933) -- The Operative Executive Order Confiscating**

**Gold/Amendment Exempting Gold Coin Having a Recognized Special Value to Collectors Rare and Unusual Coins; Revokes Previous Order #6102**

RELATING TO THE HOARDING, EXPORT, AND EARMARKING OF GOLD COIN, BULLION, OR CURRENCY AND TO TRANSACTIONS IN FOREIGN EXCHANGE

By virtue of the authority vested in me by section 5(b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking and for other purposes"; I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof, and for the investigation and regulation of transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

SEC. 2. DEFINITIONS.-As used in this order the term "person" means an individual, partnership, association, or corporation, and the term "United States" means the United States and any place subject to the jurisdiction thereof.

SEC. 3. RETURNS.-Within 15 days from the date of this order every person in possession of and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return, the kind and amount of such coin, bullion, or certificates held and the location thereof, if held for another, the capacity in which held and the person for whom held, together with the post-office address of such person, and the nature of the transaction requiring the holding of such coin, bullion, or certificates and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates, provided that no returns are required to be filed with respect to-

(a) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate \$100 belonging to any one person.

(b) Gold coin having a recognized special value to collectors of rare and unusual coin,

(c) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secretary of the Treasury, and

(d) Gold coin, gold bullion, and gold certificates owned by Federal Reserve banks. Such return required to be made by an individual shall be filed with the collector of internal revenue for the collection district in which such individual resides, or, if such individual has no legal residence in the United States, then with the collector of internal revenue at Baltimore, Md. Such return required to be made by a partnership, association, or corporation shall be filed with the collector of internal revenue of the collection district in which is located the principal place of business or principal office or agency of such partnership, association, or corporation, or, if it has no principal place of business or principal office or agency in the United States, then with the collector of internal revenue at Baltimore, Md. Such return required to be made by an individual residing in Alaska shall be filed with the collector of internal revenue at Seattle, Wash. Such return required to be made by a partnership, association, or corporation having its principal place of business or principal office or agency in Alaska shall be filed with the collector of internal revenue at Seattle, Wash. The Secretary of the Treasury may grant a reasonable extension of time for filing a return, under such rules and regulations as he shall prescribe. No such extension shall be for more than 45 days from the date of this Executive order. An extension granted hereunder shall be deemed a license to hold for a period ending 15 days after the expiration of the extension.

The returns required to be made and filed under this section shall constitute public records, but they shall be open to public inspection only upon order of the President and under rules and regulations prescribed by the Secretary, of the Treasury.

A return made and filed in accordance with this section by the owner of the gold coin, gold bullion, and gold certificates described therein, or his duly authorized agent, shall be deemed an application for the issuance under section 5 hereof of a license to hold such coin, bullion, and certificates.

SEC. 4. ACQUISITION OF GOLD COIN AND GOLD BULLION.- No person other than a Federal Reserve bank shall after the date of this order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive order, provided that member banks of the Federal Reserve System may accept delivery of such coin, bullion, and certificates for surrender promptly to a Federal Reserve bank, and provided further that persons requiring gold for use in the industry, profession, or art in which they are regularly engaged may replenish their stocks of gold up to an aggregate amount of \$100, by acquisitions of gold bullion held under licenses issued under section 5(b), without necessity of obtaining a license for such acquisitions. The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of-

- (a) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;
- (b) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (c) or (d) of section 6 hereof, and
- (c) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefore.

Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder.

SEC. 5. HOLDING OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES. -After 30 days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion or gold certificates with respect to which a return need not be filed under section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of-

- (a) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used,
- (b) Gold bullion which the Secretary, or such agency as he may designate is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;
- (c) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements, and
- (d) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses.

SEC. 6. EARMARKING AND EXPORT OF GOLD COIN AND GOLD BULLION. -After the date of this order no person shall earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this order.

The Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing-

(a) The export of gold coin or gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government, foreign central bank, or the Bank for International Settlements;

(b) The export of gold, (i) imported for reexport, (ii) refined from gold-bearing materials imported by the applicant under an agreement to export gold, or (iii) in bullion containing not more than 5 ounces of gold per ton,

(c) The export of gold coin or gold bullion to the extent actually required for the fulfillment of a contract entered into by the applicant prior to April 20, 1933, but not in excess of the amount of the gold coin, gold bullion, and gold certificates surrendered by the applicant on or after March 9, 1933, to a banking institution in the continental United States or to the Treasurer of the United States, and

(d) The earmarking for foreign account and/or export of gold coin or gold bullion, with the approval of the President, for transactions which the Secretary of the Treasury may deem necessary to promote the public interest.

SEC. 7. UNITED STATES POSSESSIONS-SHIPMENTS THERETO.-The provisions of sections 3 and 5 of this order shall not apply to gold coin, gold bullion, or gold certificates which is situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, and is owned by a person not domiciled in the continental United States. The provisions of section 4 shall not apply to acquisitions by persons within the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States of gold coin or gold bullion which has not been taken or sent thereto since April 5, 1933, from the continental United States or any place subject to the jurisdiction thereof.

SEC. 8. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States, by any person within the United States; and the Secretary of the Treasury may require any person engaged in any transaction referred to herein to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction is completed.

SEC. 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order. Such regulations may provide for the detention in the United States of any gold coin, gold bullion, or gold certificates sought to be transported beyond the limits of the continental United States, pending an investigation to determine if such coin, bullion, or certificates are held or are to be acquired in violation of the provisions of this Executive order. Licenses and permits granted in accordance with the provisions of this order and the regulations prescribed hereunder, may be issued through such officers or agencies as the Secretary may designate.

SEC. 10. Whoever willfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SEC. 11. The Executive orders of April 5, 1933, forbidding the hoarding of gold coin, gold bullion,

and gold certificates, and April 20, 1933, relating to foreign exchange and the earmarking and export of gold coin or bullion or currency, respectively, are hereby revoked. The revocation of such prior Executive orders shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Executive orders shall continue and may be enforced in the same manner as if said revocation had not been made. This Executive order and any regulations or licenses issued hereunder may be modified or revoked at any time.

[Note: This document can be found in volume 2 of The Public Papers and Addresses of Franklin D. Roosevelt at 345-352.]

**C. Amendment to Executive Order 6260 Exempting Gold Coin Having a Recognized Special Value to Collectors of Rare and Unusual Coin from Confiscation**  
(December 28, 1933)

Order of the Secretary of the Treasury, December 28, 1933, Requiring the Delivery of Gold Coin, Gold Bullion, and Gold Certificates to the Treasurer of the United States.

Whereas Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking, and for other purposes", provides in subsection (n) as follows:

"Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect to which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise"; and

Whereas in my judgment such action is necessary to protect the currency system of the United States;

Now, therefore, I, Henry Morgenthau, Jr., Acting Secretary of the Treasury, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

(b) Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as \$2.50 pieces).

[Editor's Note: A subsequent Order of the Treasury dated January 11, 1934 amended section (b) to read as follows: "Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as \$2.50 pieces, unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by a the same mint."]

**D. All Pre-1933 Gold Coins Designated Collectors' Items (1954)**

Title 31 of Code of Federal Regulations--Money and Finance: Treasury Chapter 1--Monetary Offices, Department of the Treasury Part 54--Gold Regulations Subpart B--Conditions Under Which Gold May Be Acquired and Held, Transported, Melted or Treated, Imported, Exported or Earmarked

The full text of the Gold Regulations, as hereby amended, is found at 31 CFR Part 54. These amendments incorporate into the Gold Regulations the following changes:

Sec. 54.12 Conditions under which gold may be acquired, held, melted, etc. Gold in any form may be acquired, held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions prescribed in the regulations in this part or licenses issued thereunder.

Sec. 54.14 Gold situated outside of the United States. Gold in any form situated outside of the United States may be acquired, transported, melted or treated, or earmarked or held in custody for foreign or domestic account without the necessity of holding a license.

Sec. 54.15 Gold situated in the possessions of the United States. Gold in any form (other than United States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: Provided, however, That gold may be transported from the continental United States to the possessions of the United States only as authorized by Secs. 54.25, 54.32, 54.33, or 54.34, or licenses issued pursuant thereto.

Sec. 54.20 Rare Coin.

(a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired and held, transported within the United States, or imported without the necessity of holding a license therefor. Such coin may be exported, however, only in accordance with the provisions of Sec. 54.25.

(b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made subsequent to April 5, 1933, is presumed not to be of recognized special value to collectors of rare and unusual coin.

Sec. 54.25 Licenses (b)(3) Rare coin.

(i) Rare gold coin, as defined in Sec. 54.20, made prior to April 5, 1933, may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: Provided, however, That the shipper's export declaration shall contain a statement that such coin is rare gold coin and is being exported pursuant to the authorization contained in this subparagraph and such additional documentation shall be furnished as may be requested by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(ii) Gold coin made subsequent to April 5, 1933, may be exported or transported from the continental United States only under license on Form TGL-11 issued by the Director of the Mint. Application for such a license shall be executed on Form TG-11 and filed with the Director of the Mint, Treasury Department, Washington 25, D.C.

#### **E. Executive Order 10905 (1961)--Prohibits Americans from Owning Gold Situated Outside the United States**

Amendment of Executive Order No. 6260 of August 28, 1933, as Amended

By virtue of the authority vested in me by section 5(b) of the act of October 6, 1917, as amended, 12 U.S.C. Sec. 95(a), and in view of the continued existence of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby further amend Executive Order No. 6260, as amended, as follows:

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1. By amending section 2 to read as follows:

“2. As used in this order, the term ‘person’ means an individual, partnership, association or corporation; the term ‘United States’ means the United States and any place subject to the jurisdiction thereof; and the term ‘person subject to the jurisdiction of the United States’ means: (a) any individual who is a citizen of the United States; (b) any individual, wherever located, who is a resident of, or domiciled in, the United States; (c) any partnership, association, corporation, or other organization which is organized or doing business under the laws of the United States or any state or territory thereof or the District of Columbia; and (d) any partnership, association, corporation or other organization wherever organized or doing business which is owned or controlled by persons specified in (a), (b), or (c).”

2. By adding at the end thereof a new section 12 reading as follows:

“12. Except under license issued therefor pursuant to the provisions of this order, no person subject to the jurisdiction of the United States shall, after the effective date of this section, acquire, hold in his possession, earmark, or retain any interest, legal or equitable, in any gold coin (other than gold coin having a recognized special value to collectors of rare and unusual coin), gold certificates, or gold bullion situated outside of the United States, or any securities issued by any person holding, as a substantial part of his assets, gold as a store of value or as, or in lieu of, money and not for a specific and customary industrial, professional or artistic use. The Secretary of the Treasury, subject to such other regulations as he may prescribe, is authorized to issue licenses permitting, until June 1, 1961, the holding and disposition of any such securities or gold coin, certificates or bullion acquired by persons subject to the jurisdiction of the United States prior to the effective date of this section and owned by such persons on such date. The Secretary is further authorized to issue licenses permitting the acquisition and holding by persons subject to the jurisdiction of the United States of gold bullion situated outside of the United States which the Secretary or such agency as he may designate is satisfied is required for legitimate and customary use in the industry, profession or art in which such person is regularly engaged.”

This amendment shall become effective upon filing for publication with the Office of the Federal Register.

DWIGHT D. EISENHOWER THE WHITE HOUSE, January 14, 1961

[Note: This document can be found at 26 Federal Register 321 (1961)]

#### **F. Executive Order 11037 (1962)--Prohibition Against Americans Owning Gold Outside the United States, Including New Restrictions on Importation of Collectible Gold Coins**

Amendment of Section 12 of Executive Order No. 6260 of August 28, 1933, As Amended

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917, as amended, 12 U.S.C. 95a, and in view of the continued existence of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, I, John F. Kennedy, President of the United States of America, do hereby further amend Executive Order No. 6260, as amended, as follows:

1. Section 12 is amended to read as follows:

“12. Except under license issued therefor pursuant to the provisions of this order, no person subject to the jurisdiction of the United States shall, after the effective date of this section, acquire, hold in his possession, earmark, or retain any interest, legal or equitable, in any gold coin, gold certificates, or gold bullion, situated outside of the United States or any securities issued by any person holding, as a substantial part of his assets, gold as a store of value or as, or in lieu of, money and not for a specific and customary industrial, professional or artistic use. The Secretary of the Treasury, subject to such other regulations as he may prescribe, is authorized to issue licenses permitting the acquisition and holding by persons subject to the jurisdiction of the United States of gold bullion situated outside of the United States which the Secretary or such agency as he may designate is satisfied is required for legitimate and customary use in the industry, profession, or art in which such person is regularly engaged.”

2. Notwithstanding the provisions of Section 1 of this Order, the Secretary of the Treasury is authorized to issue licenses permitting, until January 1, 1963, the holding and disposition or importation of gold coins having a recognized special value to collectors of rare and unusual coin situated outside of the United States which were acquired by persons subject to the jurisdiction of the United States prior to

the effective date of this amendment and are owned by such persons on such date.

This amendment shall become effective upon filing for publication with the Office of the Federal Register.

JOHN F. KENNEDY  
THE WHITE HOUSE, July 20, 1962

[Note: This document can be found at 27 Federal Register 6967 (1962)]

[Editor's Note: The Treasury Department, Office of Domestic Gold and Silver Operations, issued a brief explanation about the two executive orders in 1961 and 1962. "The restrictions in the Gold Regulations on gold coins implement the Gold Reserve Act of 1934, the purpose of which was to improve the United States monetary system by centralizing and conserving the nation's gold stock and by prohibiting the private holding of gold as a store of value. Under this Act and the Regulations, private citizens are permitted to have gold only as needed for legitimate and customary use in industry, profession or art. Also, there have always been exemptions for gold coins of recognized special value to collectors.

Originally, the Gold Regulations were applicable only to gold and gold coins situated within the United States. However, in 1961, restrictions were placed on the acquisition, holding, etc., by United States nationals of gold situated overseas. In 1962 the special restrictions. . . were imposed on the acquisition abroad and importation of rare gold coins for the reason that it had been brought to our attention that there appeared to be a certain amount of interest on the part of Americans in taking advantage of the exceptions in the Gold Regulations for rare gold coins to speculate in and hoard gold. Moreover, many countries began producing restrikes of their pre-1933 gold coins and there was an appreciable amount of counterfeiting of gold coins made before this date."]

#### **G. Amendment to Section 54.20 of the Gold Regulations (1969)--Allowing Importation of Coins Before 1934 Without a License**

RULES AND REGULATIONS TITLE 31—MONEY AND FINANCE: TREASURY Chapter I—  
Monetary Offices, Department of the Treasury PART 54--GOLD REGULATIONS Imports of Gold  
Coin

Section 54.20 of the Gold Regulations is being amended to permit the importation without a license of gold coins made before 1934. Licenses will be required to import any gold coins made during 1934 or later. Licenses for importation may be issued for coins minted before 1960 which can be established to the satisfaction of the Director, Office of Domestic Gold and Silver Operations, to be of recognized special value to collectors of rare and unusual coin and to have been originally issued to circulate as coinage within the country of issue. Licenses for importation may be issued for gold coins made during or subsequent to 1960 only in cases where the particular coin was licensed for importation prior to April 30, 1969. Because the amendments relieve an existing restriction and in the case of coins made after 1933 make no change in present Regulations and licensing policies, it is found that notice and public procedure thereon are unnecessary.

Section 54.20 is amended to read: § 54.20 Rare coin.

(a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired, held, and transported within the United States without the necessity of holding a license therefor. Such coin may be imported, however, only as permitted by this section or §§ 54.28 to 54.30, 54.34 or licenses issued thereunder, and may be exported only in accordance with the provisions of § 54.25.

(b) Gold coin made prior to 1934 is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made during or subsequent to 1934 is presumed not to be of recognized special value to collectors of rare and unusual coin.

(d) Gold coin made prior to 1934 may be imported without the necessity of obtaining a license there-

for.

(e) Gold coin made during or subsequent to 1934 may be imported only pursuant to a specific or general license issued by the Director, Office of Domestic Gold and Silver Operations. Licenses under this paragraph may be issued only for gold coin made prior to 1960, which can be established to the satisfaction of the Director to be of recognized special value to collectors of rare and unusual coin and to have been originally issued for circulation within the country of issue. Licenses may be issued for gold coin made during or subsequent to 1960 in cases where the particular coin was licensed for importation prior to April 30, 1969. Application for a specific license under this paragraph shall be executed on Form TG-31 and filed in duplicate with the Director.

(Sec. S(b), 40 Stat. 415, as amended, secs. 3, 8, 9, 11, 48 Stat. 340, 341, 342; 12 U.S.C. 95a, 31 U.S.C. 442, 733, 734, 822b, E.O. 6260, Aug. 28, 1933, as amended by E.O. 10896, 25 P.R. 12281, E.O. 10905, 26 P.R. 321, E.O. 11037, 27 P.R. 6967; 3 CFR, 1959-63 Comp. and E.O. 6359, Oct. 25, 1933, E. O. 9193, as amended, 7 F.R. 5205; 3 CFR 1943, Cum. Supp., E.O. 10289, 16 F.R. 9499, 3 CFR, 1949-53 Comp.)

Effective date: These amendments shall become effective on publication in the FEDERAL REGISTER.

Dated: April 22, 1969. (SEAL)

PAUL A. VOLCKER, Under Secretary for Monetary Affairs.

News Release with Respect to Relaxing Gold Coin Limitations/Paul Volcker

TREASURY DEPARTMENT Washington, D.C. 20220 FOR RELEASE ALL NEWSPAPERS Saturday, April 26, 1969

#### **H. Treasury Relaxes Licensing Regulations of Gold Coin Imports**

The Treasury Department announced today a revision of gold coin import regulations to permit imports of gold coins minted prior to 1934 without license.

Relaxation of the licensing requirement is effective today and was made to remove an inconsistency in regulations on imported pre-1934 gold coins, which generally had to have licenses, and those regularly traded within the United States.

Gold coins minted during or after 1934, however, may be imported only with a license from the Director, Office of Domestic Gold and Silver Operations, Treasury Department, Washington, D. C. Such licenses are issued only for rare and unusual coins of recognized special value to collectors. Importation of gold coins minted in 1960 or afterwards still will not be licensed.

Before this change in the regulations, all coins made prior to April 5, 1933 could be freely bought, sold, and held within the United States. However, only rare and unusual gold coins could be imported and then only pursuant to a specific license. Under this standard, certain coins minted before 1934 did not qualify for import even though they were freely traded in the domestic market. With the change in the Regulations any gold coin may be imported which can now be legally traded within the United States.

The amendments will simplify existing restrictions on numismatists while continuing to serve the basic purpose of the Gold Regulations. The current licensing policy will be retained for coins minted after January 1, 1934. Gold coins may still be detained at Customs stations for examination as to their authenticity. Counterfeit coins may not be imported and are subject to seizure. Restrikes, that is modern reproductions of gold coins bearing a much earlier date, will also not qualify for importation. Therefore, travelers and coin collectors should be especially careful that the coins they purchase abroad are genuine.

I. Congressional Act in 1974 to Re-Legalize Gold Ownership by U.S. Citizens

Public Law 93-373 (August 14, 1974)

An Act: To provide for increased participation by the United States in the International Development Association and to permit United States citizens to purchase, hold, sell, or otherwise deal with gold in the United States or abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 2. Subsections 3 (b) and (c) of Public Law 93-110 (87 Stat. 352) are repealed and in lieu thereof add the following:

“(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

“(c) The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States’ international monetary position.”

[Note: This law can be found at 88 U.S. Statutes at Large 445 (1974)]

J. Executive Order 11825 (1974)--Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold

By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a), and as President of the United States, and in view of the provisions of section 3 of Public Law 93-110, 87 Stat. 352, as amended by section 2 of Public Law 93-373, 88 Stat. 445, it is ordered as follows:

Section 1. Executive Order No. 6260 of August 28, 1933, as amended by Executive Order No. 6359 of October 25, 1933, Executive Order No. 6556 of January 12, 1934, Executive Order No. 6560 of January 15, 1934, Executive Order No. 10896 of November 29, 1960, Executive Order No. 10905 of January 14, 1961, and Executive Order No. 11037 of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951, are hereby revoked.

Section 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

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### **APPENDIX III**

#### **Chronology of Legal Documents Relating to the Devaluation of the U.S. Dollar**

##### **A. Presidential Proclamation No. 2072 of January 31, 1934 Reducing the Weight of the Gold Dollar**

Whereas, by virtue of section 1 of the act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at twenty-five and eight-tenths grains of gold nine-tenths fine; and

Whereas, by section 43, title III of the act approved May 12, 1933 (Public No. 10, 73rd Cong.), as amended by section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

“Whenever the President finds, upon investigation, that (1) foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or  
(2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion--

“(2) By proclamation to fix the weight of the gold dollar in grains nine-tenths fine and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934, unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency”; and

Whereas, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

Whereas, in my judgment, measures additional to those provided by subsection (a) of said section 43 are required to meet the purposes of such section; and

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5/21 grains nine-tenths fine,

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5/21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

[Editor's Note: At this weight of 15 5/21 grains nine-tenths fine, the statutory value of gold became \$35 per fine ounce. This document can be found in volume 3 of The Public Papers and Addresses of Franklin D. Roosevelt at 67-70.]

## **B. Closing of the Gold Window by President Richard Nixon on August 15, 1971**

[Excerpt from the August 15, 1971 “Address to the Nation Outlining a New Economic Policy: ‘The Challenge of Peace’” found in The Public Papers of the Presidents of the United States: Richard M. Nixon 1971 at 886-890.]

The time has come for a new economic policy for the United States. Its targets are unemployment, inflation, and international speculation. . . . I am today ordering a freeze on all prices and wages throughout

the United States for a period of 90 days [Ed. Note: Executive Order 11615]. In addition, I call upon corporations to extend the wage-price freeze to all dividends. I have today appointed a Cost of Living Council within the Government [Ed. Note: Executive Order 11615]. . .

The third indispensable element in building the new prosperity is closely related to creating new jobs and halting inflation. We must protect the position of the American dollar as a pillar of monetary stability around the world. In the past 7 years, there has been an average of one international monetary crisis every year. Now who gains from these crises? Not the workingman; not the investor; not the real producers of wealth. The gainers are the international money speculators. Because they thrive on crises, they help to create them.

In recent weeks, the speculators have been waging an all-out war on the American dollar. The strength of a nation's currency is based on the strength of that nation's economy--and the American economy is by far the strongest in the world. Accordingly, I have directed the Secretary of the Treasury to take the action necessary to defend the dollar against the speculators. I have directed Secretary Connally to suspend temporarily the convertibility of the dollar into gold or other reserve assets, except in amounts and conditions determined to be in the interest of monetary stability and in the best interests of the United States. [Editor's Note: In the course of research for this memorandum, much information was discovered which is important for understanding the events leading up to President Nixon's decision to close the gold window. For example, on pages 40-46 of the 1968 Annual Report of the Secretary of the Treasury, it states that in March of 1968 massive speculative buying of gold in London was draining official reserves which forced the dissolution of the London Gold Pool and the subsequent creation of a two-tiered gold system. This two-tiered system allowed the private commodity price of gold to fluctuate without official intervention while the official price and the role of monetary gold in transactions between countries remained unchanged. This is just one example of additional information that could be discussed. Unfortunately, any further discussion beyond this reference remains outside the scope of this memorandum.]

**C. Modification in the Par Value of the Dollar, Raising the Gold Price to \$38/ounce  
[Public Law 92-268, 92nd Congress, S. 3160, March 31, 1972]**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Par Value Modification Act".

Sec. 2. The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of \$1 equals one thirty-eighth of a fine troy ounce of gold. When established such par value shall be the legal standard for defining the relationship of the dollar to gold for the purpose of issuing gold certificates pursuant to section 14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405b).

Sec. 3 The Secretary of the Treasury is authorized and directed to maintain the value in terms of gold of the holdings of the United States dollars of the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Development Association, and the Asian Development Bank to the extent provided in the articles of agreement of such institutions. There is hereby authorized to be appropriated, to remain available until expended, such amounts as may be necessary to provide for such maintenance of value.

Sec. 4. The increase in the value of the gold held by the United States (including the gold held as security for gold certificates) resulting from the change in the par value of the dollar authorized by section 2 of this Act shall be covered into the Treasury as a miscellaneous receipt.

[Editor's Note: In the 1972 Annual Report of the Secretary of the Treasury, page 382, some background information regarding the proposed modification of the par value of the dollar is given. We quote: "The Administration has proposed legislation authorizing and directing the Secretary of the Treasury to take the steps necessary to modify the par value of the dollar in the International Monetary Fund, by an amount corresponding to an increase of 8.57 percent, to \$38 per fine troy ounce, in the official value of

gold, as agreed provisionally in the Smithsonian agreement of the Group of Ten on December 18, 1971. (This modification is equivalent to a reduction of approximately 7.89 percent in the value of the dollar stated in terms of grams of gold per dollar, from .888671 grams to .818513 grams.) The bill would also provide for maintenance of the value of U.S. subscriptions to international financial institutions.”

“This report describes the Smithsonian agreement, the status of negotiations on related issues, and the increases in U.S. assets and liabilities which will result from the change in the dollar’s par value . . . The Smithsonian agreement of the Group of Ten followed a period of international monetary adjustment, involving a generalized system of floating (but not freely floating) exchange rates, during 1971. The agreement consisted of a series of interrelated measures designed to help resolve balance of payments problems, to restore more settled conditions to the Exchange markets, and to provide a framework from which longer term reform could evolve.”]

[Editor’s Note: In the 1972 Annual Report of the Secretary of the Treasury, page 394, a brief overview of the U.S. government’s position favoring devaluation is given. We quote: “The official dollar price of gold was fixed at \$35 per ounce by Executive Order in 1934. From that date until August 15, 1971, the United States has applied this official price in monetary transactions with foreign monetary authorities. This convertibility of the dollar into gold has since 1945 provided the link between currencies and gold for the world as a whole, as other currencies were convertible into dollars rather than into gold. This link to gold was suspended on August 15, 1971. U.S. reserves had been shrinking for many years, while other countries accumulated dollar claims on the United States which they treated as official reserves. Gold came to represent less than two-fifths of world reserves with dollars as the major growing component of world reserves. The strain on the dwindling U.S. reserves in August threatened to become unmanageable, draining our remaining reserve holdings to no constructive purpose. The suspension of convertibility halted this reserve outflow, and set the stage for a thoroughgoing and overdue reappraisal of some aspects of the international monetary system.”]

[Editor’s Note: In the book, The Memoirs of Richard Nixon, President Nixon remarked on page 518 about how an unexpected development forced him to suspend the convertibility of dollars into gold. “In the second week of August [1971] the British ambassador appeared at the Treasury Department to ask that \$3 billion be converted into gold. Whether we honored or denied this request, the consequences of our action would be fraught with danger: if we gave the British the gold they wanted, then other countries might rush to get theirs. If we refused, then that would be an admission of our concern that we could not meet every potential demand for conversion into gold.”]

#### **D. Modification in the Par Value of the Dollar, Raising the Gold Price to \$42.22/ounce**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 2 of the Par Value Modification Act (Public Law 92-268) is amended by striking the words “one thirty-eighth of a fine troy ounce of gold” and inserting in lieu thereof the following: “0.828948 Special Drawing Right or, the equivalent in terms of gold, of \$1 equals 0.023684 of a fine troy ounce of gold”.

[Editor’s Note: In the 1973 Annual Report of the Secretary of the Treasury, page 414, an explanation of the effect of modifying the par value of the dollar has on the gold price is given. We quote: “The administration has proposed legislation authorizing and directing the Secretary of the Treasury to take the necessary steps to modify the par value of the dollar in the International Monetary Fund, by an amount corresponding to an increase of 11.11 percent in the value of one special drawing right in the IMF, or, in terms of gold, of 11.11 percent in the official value of an ounce of gold. This modification is equivalent to a reduction of 10 percent in the value of the dollar stated in terms of special drawing rights per dollar, from 0.921053 SDR to 0.828948 SDR, or to the equivalent in terms of gold of one dollar equals 0.023684 fine troy ounces of gold. This corresponds to a value of \$42.22 per fine troy ounce of gold.”]

On page 415, the Report states the reason which led the U.S. to modify the par value of the dollar. Again we quote: “Following the Smithsonian realignment in December 1971, there was a gradual return to a calmer situation in the exchange markets. However, this period of relative tranquility was punctuated in the middle of 1972 by speculation directed against the pound sterling. As a result of this pressure, the pound sterling was allowed to float and the market rate depreciated moderately below the central value

fixed under the Smithsonian arrangement. During this period in the middle of the year nearly one-half of the overall 1972 deficit of about \$10 billion in our official reserve transactions account took place. Following this period of disruption in the markets, more orderly conditions were again restored.”]

### **E. I.R.S. Proposed Reporting Requirements for Gold Bullion Sales (1984) Information Return of Brokers**

[Note: This document can be found at 49 Federal Register 646-648 (1984), 26 CFR Part 1, I.R.C. Section 6045-1 (1954).]

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6045 of the Internal Revenue Code of 1954, relating to information returns of brokers. These proposed amendments clarify information reporting requirements for brokers effecting sales (including short sales) of commodities. The amendments are to be issued under the authority of sections 6045 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 747; 26 U.S.C. 6045, 7805).

The current regulations under section 6045 generally require brokers to make returns of information on sales (including short sales) of commodities effected for customers . . . The term “commodity” does not include a security, regulated futures contract, forward contract, or a form of tangible personal property if the gross proceeds from its sale exceed by more than 15 percent its value as a commodity. . .

Section 1.6045-1 Returns of information of brokers and barter exchanges. (a) Meaning of terms. (5)(i) The term “commodity” does not include--

(D) A form of tangible personal property, or an interest therein, gross proceeds from the sale of which exceed by more than 15 percent the value on the date of sale of the underlying personal property determined, at the election of the broker, by either exact valuation or approximate valuation. . . .

(iv) For purposes of paragraphs (a)(5)(ii)(E) and (iii) of this section, “type of tangible personal property” means any tangible personal property described in paragraph (a)(5)(i)(A), (B), or (C) of this section and any other tangible personal property that cannot be commercially reduced into two or more elements.

(b) Examples.

Example (9). If the gross proceeds from the sale of a gold coin (such as a Krugerrand, Maple Leaf, 50 Peso coin, or 100 Crown coin) do not exceed by more than 15 percent the bullion value of the gold in the coin, the coin is a commodity under paragraph (a)(5)(i)(D) of this section and is not excluded by paragraph (a)(5)(ii)(D) of this section.

Example (10). U.S. silver dimes, quarters, and half dollars minted before 1965 are personal property deliverable in satisfaction of a regulated futures contract approved by the Commodity Futures Trading Commission. The coins are a commodity under paragraph (a)(5)(i)(A) of this section. If, however, the gross proceeds from the sale of an individual coin exceed by more than 15 percent the bullion value of the silver in the coin, the coin is not a commodity under paragraph (a)(5)(ii)(D) of this section. . . .

Example (11). If the gross proceeds from the sale of a U.S. silver dollar minted before 1970 do not exceed by more than 15 percent the bullion value of the silver in the coin, the coin is a commodity under paragraph (a)(5)(i)(D) of this section and not excluded by paragraph (a)(5)(ii)(D) of this section.

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## **APPENDIX IV**

### **Chronology of Major Actions with Respect to Gold Ownership from October 6, 1917 to January 5, 1984.**

By Henry Mark Holzer with additions by George R. Cooper

(Henry Mark Holzer is Professor of Law at Brooklyn Law School, where he teaches constitutional law, administrative law, and other courses. His practice is limited to appeals and constitutional litigation. Pro-

fessor Holzer has lectured widely on a variety of legal and law-related topics, and his articles have appeared in newspapers, popular and professional magazines, and academic journals. He is the author *The Gold Clause and Government's Money Monopoly*.)

The following is reprinted from "How Americans Lost Their Right To Own Gold And Became Criminals in the Process" by Henry Mark Holzer with permission of the Committee for Monetary Research and Education, Inc., 10004 Greenwood Court, Charlotte, North Carolina 28215.

1. October 6, 1917: Enactment of Trading with the Enemy Act; President receives power to regulate and/or prohibit transactions in gold.
2. September 24, 1918: Amendment of Trading with the Enemy Act: President receives power to prohibit hoarding of gold.
3. March 5, 1933: Presidential Proclamation No. 2038; convenes Congress on March 9, 1933.
4. March 6, 1933: Presidential Proclamation No. 2039; bank holiday declared until March 9, 1933.
5. March 9, 1933: Presidential message to Congress (H.R. Doc. No. 1); requests passage of H.R. 1491, emergency banking legislation.
6. March 9, 1933: Enactment of Emergency Banking Act; approves bank holiday; delegates to President power to regulate and/or prohibit transactions in gold in time of war, or during any other national emergency declared by him; delegates to Secretary of the Treasury power to requisition gold.
7. March 9, 1933: Presidential Proclamation No. 2040; continues bank holiday.
8. March 10, 1933: Presidential Executive Order No. 6073; authorizes Secretary of the Treasury to decide which banks can reopen; prohibits export of gold, except as allowed by Secretary of the Treasury.
9. March 18, 1933: Presidential Executive Order No. 6080; authorizes appointment of bank conservators, if necessary to protect bank assets.
10. April 5, 1933: Presidential Executive Order No. 6102; owners of gold required to turn it over to the Government in exchange for paper currency.
11. April 19, 1933: Secretary of the Treasury advises that until further notice no licenses will be granted for export of gold.
12. April 20, 1933: Presidential Executive Order No. 6111; prohibits earmarking for foreign account and the export of gold coin, gold bullion, or gold certificates, but authorizes Secretary of the Treasury to issue licenses permitting such export under certain conditions.
13. April 29, 1933: Secretary of the Treasury issues regulations; persons needing gold for proper transactions not involving hoarding can apply for licenses; day before Acting Secretary of the Treasury announced no such licenses would be granted unless applicant had first surrendered his gold.
14. June 5, 1933: Joint Resolution of Congress declares gold clause contracts violate public policy and thus are void; action later upheld by Supreme Court in *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240 (1935).
15. August 28, 1933: Presidential Executive Order No. 6260; declares national emergency, revokes Executive Orders of April 5 and 20, 1933; requires filing of information returns; with certain minor exceptions, requires delivery of all domestically held private gold to Federal Reserve Banks; authorizes Secretary of the Treasury to license acquisition of gold: imposes stiff criminal penalties for violation of government gold policies.
16. August 29, 1933: Presidential Executive Order No. 6261; forces domestic gold producers to sell their output to Secretary of the Treasury, at price to be set by latter, for resale to those with gold licenses

and/or foreign purchasers.

17. September 12, 1933: Secretary of the Treasury issues comprehensive regulations under Executive Orders of August 28 and 29, 1933.

18. October 25, 1933: Presidential Executive Order No. 6359; amends (in minor way) and revokes, respectively, Executive orders of August 28 and 29, 1933: Treasury Department, to conform amends its regulations of September 12, 1933 accordingly.

19. November 16, 1933: United States District Court in New York upholds passage of Emergency Banking Act of March 9, 1933, its delegation of power to the President, and Section 3 of his Executive Order of August 28, 1933 requiring returns to be filed; invalidated is Roosevelt's requisition of gold under the August 28, 1933 Executive Order, which the court holds should have been made by the Secretary of the Treasury. *Campbell v. Chase Nat'l Bank*, 5 F. Supp. 156 (S.D.N.Y. 1933).

20. December 28, 1933: Secretary of the Treasury promulgates order requisitioning gold, setting deadline of midnight on January 1, 1934.

21. January 11, 1934: Secretary of the Treasury amends in minor respect a rare 40 coin exception made in his December 28, 1933 order.

22. January 12, 1934: Presidential Executive Order No. 6556; amends in minor respect the Executive Order of August 28, 1933.

23. January 15, 1934: Presidential Executive Order No. 6560; makes minor changes regarding transactions in foreign exchange, transfers of credit, and the export of coins and currency.

24. January 15, 1934: Secretary of the Treasury directs mints and assay offices to receive gold newly mined in the United States on consignment for the Federal Reserve Bank of New York; also supplements his order of December 28, 1933 by extending until midnight on January 17, 1934, the deadline for the surrender of gold in compliance with his order of December 28, 1933.

25. January 15, 1934: Presidential message to Congress; requests passage of additional gold legislation, vesting in the Government possession and title to all monetary gold in America.

26. January 17, 1934: Secretary of the Treasury instructs the Treasurer, mints, assay offices, and fiscal agents of the United States regarding gold not delivered to the Government before the midnight deadline.

27. January 17, 1934: Senate Banking and Currency Committee makes public the opinion of Attorney General Homer Cummings to the effect that the proposed new gold legislation is constitutional.

28. January 30, 1934: Gold Reserve Act approved: transfers to Government all gold of Federal Reserve System; gold coin ordered withdrawn from circulation and formed into bars; gold in any form to be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account only to the extent allowed by Treasury regulations issued under Act; Secretary of the Treasury issues provisional regulations.

29. January 31, 1934: Provisional Treasury regulations amended with regard to purchase and sale of gold by United States mints; also in regard to collectors of rare coins.

30. July 20, 1962: by Executive Order No. 11037, President John F. Kennedy prohibits Americans from owning gold outside the continental limits of the United States.

[The following updated chronology which discusses the criminalization of gold ownership in 1933 to its re-legalization in 1974 has been supplied by George Cooper. It is meant to fill in and supplement those areas which the original chronology overlooked.]

31. January 31, 1934: Proclamation No. 2072 of Franklin D. Roosevelt which reduced the weight of the

gold dollar from twenty-five and eight-tenths grains of gold nine-tenths fine to fifteen and five twenty-firsts grains nine-tenths fine. In the process, the statutory value of gold was raised from \$ 20 . 67 per fine ounce to \$35 per fine ounce.

32. July 14, 1954: Treasury Department regulations holding that all gold coins made prior to April 5, 1933 are of recognized special value to collectors of rare and unusual coin within the meaning of Sec. 54.20 of the Gold Regulations. Treasury Department now recognizes pre-1933 European gold coins as well as other pre- 1933 coins from other countries.

33. January 14, 1961: by Executive Order No. 10905, President Dwight D. Eisenhower prohibits U.S. citizens from retaining any interest, legal or equitable, in any gold with the exception of gold coin having a recognized special value to collectors of rare and unusual coin. The Secretary of the Treasury is authorized to issue licenses permitting the acquisition and holding by persons subject to the jurisdiction of the United States of gold bullion situated outside the borders.

34. March 16-17, 1968: Meeting of the Governors of the Central Banks represented in the London Gold Pool along with the Chairman of the Federal Reserve Board to adopt a two-tiered gold system. This two-tiered system allows the private commodity price of gold to fluctuate without official intervention while the official price and role of monetary gold remains unchanged in transactions between monetary authorities.

35. March 18, 1968: President Johnson signs Public Law 90-269 which allows the U.S. government to eliminate the remaining gold cover requirement for Federal Reserve notes and U.S. notes and Treasury notes of 1890 due to a rising demand for U.S. currency of about \$2 billion per year. This fact coupled with strong speculative pressure in the London gold market leads Treasury officials to conclude that the U.S. stock of “free gold” would soon be exhausted.

36. April 22, 1969: Treasury Department amends Sec. 54.20 of the Gold Regulations and permits the importation of gold coins minted prior to 1934 without a license. This amendment removes inconsistent application of the law.

37. August 15, 1971: by Executive Order No. 11615, President Richard M. Nixon instructs the Secretary of the Treasury to suspend convertibility of U.S. Dollars into gold bullion, thereby effectively closing the international gold window and setting in motion the breakdown of the Bretton Woods currency agreement.

38. March 31, 1972: by Public Law 92-268 (92nd Congress) the “Par Value Modification Act” is introduced whereby the par value of the dollar in relation to gold is changed to one thirty-eighth of a fine troy ounce of gold. The result is a devaluation of the U.S. dollar by 8.57% which has the effect of raising the value of gold to \$38 per fine troy ounce.

39. February 19, 1973 a second amendment to the “Par Value Modification Act” is undertaken which results in a devaluation of the U.S. dollar by 11.11%. In terms of gold, one dollar equals 0.023684 fine troy ounces which corresponds to a value of \$42.22 per fine troy ounce of gold.

40. August 14, 1974: by Public Law 93-373 it becomes legal as of December 31, 1974 for Americans to own all forms of gold once again.

41. December 31, 1974: Executive Order No. 11825 signed by President Gerald H. 42 Ford revokes all prior executive orders beginning with No. 6260 on August 28, 1933 up to and including No. 11037 on July 20, 1962.

42. January 5, 1984: I.R.S. proposes amendments to reporting requirements of I.R.C. Sec. 6045 to include gold bullion sales from customers to brokers. The term “commodity” is defined to exclude items of tangible personal property if the gross proceeds from sale exceed by more than 15% its value as a commodity. Thus, gold brokers are not required to report to the I.R.S. on Form 1099 sales of gold coins from clients if the value of said coins exceed the underlying gold value by more than 15%.

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## Appendix V

### Treasury Department Opinion Letter (2005) on Gold Confiscation, Press Release - Chris Powell, Gold Anti-Trust Action Committee

August 12, 2005

Mr. Chris Powell Gold Anti-Trust Action Committee Inc. Manchester, Connecticut

Dear Mr. Powell:

Your letters to Roberta McInerney, assistant general counsel (banking and finance), dated January 20 and July 17, 2005, have been forwarded to me for response. I recently became the chief counsel (foreign assets control).

The U.S. Code provision that you reference, 12 U.S.C. Sec. 95a, is a duplicate codification of Section 5 of the Trading with the Enemy Act of 1917, 50 U.S.C. App. Secs. 1-44 ("TWEA"), with respect to which my office bears responsibility for interpreting.

As you may be aware, Congress enacted TWEA during World War I to prevent certain transactions that might be of advantage to an enemy during wartime. During World War II the Treasury Department implemented extensive punitive blockings of Axis assets and protective blockings of Allied assets.

In 1950 the United States imposed economic sanctions against the People's Republic of China as a result of the Korean emergency to prevent, among other things, Chinese acquisition of foreign exchange through transactions with Americans. The Department of the Treasury's Office of Foreign Assets Control ("OFAC") began enforcing foreign asset control programs in the 1950s. Today the only economic sanctions programs administered by OFAC under TWEA are with respect to Cuba, North Korea, and certain third-country transfers of sensitive materials.

You have asked how the Treasury Department construes the term "the time of war," which appears in section 5 (b) (1) of TWEA. Although TWEA does not include a definition of the term "during the time of war," it does include definitions for the terms "the beginning of the war" and "end of the war." The words "the beginning of the war" are deemed to mean "midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war." The words "end of the war" are deemed to mean "the date of proclamation of exchange of ratifications of the treaty of peace, unless the president shall, by proclamation, declare a prior date."

Thus the phrase "during the time of war" would seem to cover the period between "the beginning of the war" and the "end of the war."

Since this period cannot come into existence without some form of congressional declaration, it would appear that TWEA -- with the exception of its present applicability to the Cuba, North Korea, and transaction control programs referenced above\* -- applies only to situations involving a declared state of war. In exercising any of the specific powers available to him under TWEA during the time of war, the president would issue an executive order or other similar instrument generally made available through publication in the Federal Register.

(\* -- From the early 1930s until 1977, when the International Emergency Economic Powers Act was enacted, TWEA applied not only in times of war but also in situations in which the president declared a peacetime national emergency. Pre-existing emergencies declared with respect to Cuba and North Korea and certain transaction controls were grandfathered, which explains why TWEA still serves as the basis for those sanctions programs, even though the United States is presently not in a state of war with respect to any of the affected countries.)

The construction of the term "hoarding," as used in section 5(b)(1) of TWEA, would depend on how the president chooses to exercise his authority with respect to hoarding in any particular instance.

In making any decisions under the authorities conferred by TWEA, the president would, of course, be taking steps to address threats to our national security during a time of war. In the past, the president has used TWEA or TWEA-like authorities to criminalize hoarding. See generally *Bauer v. United States*, 244 F.2d 794 (9th Cir. 1957). Today, however, such activity is not restricted under the only sanctions programs in effect pursuant to TWEA -- i.e., the Cuba, North Korea, and transactions- control programs.

If, during a time of war, the president expressly chose to restrict the hoarding of gold or silver, he could do so.

Among the many factors the president would likely consider before taking such action, however, is the fact that the U.S. Government now mints and issues gold and silver coins to meet public demand for both numismatic and investment purposes.  
(See 31 U.S.C. § 5112(a)(7)-(10) & (e)-(i).)

You also have asked about the president's ability to "interfere with the ownership of shares in gold and silver mining companies merely because shares of such companies also might be owned by foreign nationals or foreign governments, at war with the United States or not."

Under TWEA during times of war -- and also under the International Emergency Economic Powers Act, 50 U.S.C. Secs. 1701-05 ("IEEPA") during peacetime national emergencies -- the president has broad powers to regulate property in which there exists a foreign interest. See TWEA § 5(b)(1)(B); IEEPA Secs. 1702 (a) (1) (B).

Consequently, the president may restrict shares in any company owned by foreign persons consistent with the purposes of any declared emergency.

In this respect, foreign-owned shares in gold and silver mining companies are no different from foreign-owned shares in companies in any other industry.

Finally, you raise concerns about the "instant destruction of gold and silver investors and the precious metals mining industry in the United States." In the establishment and implementation of sanctions, the U.S. Government is always mindful of the domestic impact of restrictions meant to serve national security and foreign policy purposes. Just as the U.S. Government has been mindful of the practical impact that sanctions have on various service and manufacturing industries, it would also be mindful of the potential impact of sanctions with respect to the markets and industries associated with precious metals.

I hope you find this letter instructive. Thank you for your interest. If I can be of any further assistance, please call me.

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Sincerely,  
Sean M. Thornton Chief Counsel (Foreign Assets Control) U.S. Department of the Treasury Washington, D.C. 20222

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