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H.R. 3424—COMMUNITY CHOICE IN REAL ESTATE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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H.R. 3424—COMMUNITY CHOICE IN REAL ESTATE ACT

Wednesday, July 24, 2002

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:21 p.m., in Room 2175, Rayburn House Office Building, Hon. Spencer Bachus [chairman of the subcommittee] presiding.

Present: Representatives Bachus, Baker, Lucas of Oklahoma, Barr, Riley, Biggert, Hart, Capito, Tiberi, Waters, Maloney of New York, Watt, Bentsen, Sherman, Gutierrez, Maloney of Connecticut, Hinojosa, and Lucas of Kentucky.

Chairman BACHUS. [Presiding.] Boy, that is the quietest I have ever heard the room get. We are waiting on Mr. Kanjorski, the first panel, but we will go ahead and get started.

The Subcommittee on Financial Institutions is hereby called to order.

The subcommittee meets today for the legislative hearing on H.R. 3424, the Community Choice in Real Estate Act. Ever since the Federal Reserve and the Treasury Department issued a proposed rule in January 2001 to permit banks to engage in real estate brokerage, a vigorous debate has raged between those who believe that the proposal is an appropriate application of the agencies' authority under the Gramm-Leach-Bliley Act and those who warn that it could seriously undermine the separation between banking and commerce that Congress reaffirmed in that same landmark legislation.

One indication of the controversy engendered by the proposed rule is the number of submissions that the Federal Reserve and the Treasury received during the four-month public comment period—over 44,000.

On May 2, 2001, this subcommittee held the first hearing in Congress on the proposed Fed-Treasury rule, taking testimony from the regulators as well as a broad cross-section of industry groups on both sides of the issue. In the 15 months since the subcommittee's hearing, there have been a number of developments that I want to take a moment to summarize a few of those

In December 2001, Mr. Calvert and Mr. Kanjorski introduced 3424, the subject of today's hearing, which amends the Bank Holding Company Act to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate

brokerage or management services. At last count, H.R. 3424 had 245 cosponsors in the House. A Senate companion bill has attracted 18 cosponsors.

In April, in response to Chairman Oxley's request for a status report on their rulemaking, the Treasury and the Federal Reserve announced that they would delay until next year any further action on the real estate issue, citing the urgent priorities created by September 11 as the primary obstacle to completing the process this year.

Earlier this month, the Appropriations Committee, over the jurisdictional objections of this Committee, inserted language in the Treasury-Postal spending measure that would block implementation of the proposed rule during fiscal year 2003, or until October of next year at the earliest. The version of the Treasury-Postal appropriations bill that the full House is expected to approve later today—actually they have, I think, approved or will approve today—will include the real estate provision added in the Appropriations Committee.

I was one of the first members of Congress, along with the gentleman from Kentucky, Mr. Kanjorski, to challenge the regulatory proposal to allow banks into the real estate brokerage business. I convened last year's subcommittee hearing to ensure that members of this committee had an opportunity to be heard on an issue that is of critical importance to so many of our constituents.

Like the proponents of H.R. 3424, I have been concerned that the Fed-Treasury proposal threatens to erode the long-standing separation between banking and commerce that Congress sought to fortify in the Gramm-Leach-Bliley Act. Moreover, important questions remain regarding whether the current federal and state regulatory framework is sufficient to ensure the adequate supervision of bank real estate activities, assuming the proposed rule is ultimately implemented.

I respect the views of those who feel differently about this issue than I do, and those views are well-represented on the second panel of witnesses that we have assembled for today's hearing.

Before recognizing the Ranking Member for an opening statement, I would like to thank all of our witnesses for being here today, particularly our colleague from California, Mr. Calvert. This is a contentious issue with strongly-held views on both sides, and yet at our first hearing on the issue last year, I was very impressed, and I think other members were, by the civility and the reasoned tone of the debate. I hope that we can meet that same high standard at today's hearing, and I believe that we will.

With that, any other members wishing to be heard for an opening statement?

[The prepared statement of Hon. Spencer T. Bachus can be found on page 66 in the appendix.]

Chairman BACHUS. Mr. Hinojosa?

Mr. HINOJOSA. Thank you, Mr. Chairman. I want to thank you for calling this important hearing today on H.R. 3424, the Community Choice in Real Estate Act. This bill, introduced by my good friend and colleague, Congressman Ken Calvert, aims to clear up any confusion the banking and the real estate industries might have in relation to the Gramm-Leach-Bliley Act.

While GLB Act helped federally chartered banks access many new services and industries in the financial market, I believe that it did not include real estate brokerage. This legislation and this hearing gives us the opportunity to reexamine whether or not these two industries should be allowed to merge or share in similar business enterprises.

As a representative of a congressional district where minority and low-income home ownership are a top concern, I am especially interested in how the potential merger of these two industries will impact the Community Reinvestment Act, predatory and subprime lending as well as low income and first time home owner loan programs.

Mr. Chairman, I hope the panelists will address these issues, and I look forward to their remarks. Mr. Chairman, once again, thank you, and I yield back my time.

[The prepared statement of Hon. Rubén Hinojosa can be found on page 76 in the appendix.]

Chairman BACHUS. Thank you. Other members?

Gentleman from Oklahoma?

Gentleman from Ohio? The gentleman is recognized—Mr. Watts, I am—okay.

Mr. Maloney.

Mr. MALONEY OF CONNECTICUT. Mr. Chairman, I ask unanimous consent that members can file opening comments for the record.

Chairman BACHUS. All members' opening statements will be made a part of the hearing record on the motion from the gentleman from Connecticut.

Gentleman from North Carolina?

Mr. WATTS. Thank you, Mr. Chairman. I will not take the full time. I just want to applaud the chairman for convening the hearing. We have certainly had a lot of smoke on all sides of this issue throughout the course of this year and ever since the proposed regulations came out. And it is appropriate to try to being some more information and perspectives to this issue, I think, before we get hit with it.

It is not going to be a major issue obviously this year, because everybody has agreed that the regulations will not go forward, but I suspect the issue will not go away. And at some point we are going to have to deal with it head on, and this hearing will at least start to provide some information perspectives and positions of the various people so that we will be better informed to make a decision about it when the time comes.

So I thank the chairman for convening the hearing and yield back the balance of my time.

Chairman BACHUS. I appreciate the gentleman's comments. I will say that it was the chairman of the full committee who made the decision to have this hearing at this time and not the chairman of the subcommittee.

Mr. WATTS. You mean I should have been praising somebody else?

Chairman BACHUS. That is right.

[Laughter.]

I recognize the ranking member, Ms. Waters.

Ms. WATERS. I would like to thank you, Chairman Bachus, for holding this hearing, and I would like to take a moment to welcome two very distinguished witnesses who are here at my invitation to testify today, if I may.

Mr. Martin Edwards, Jr. is the president of the National Association of Realtors, and Mr. Robert Bailey is the president of the California Association of Realtors. And I would like to thank them for being here today to testify.

We are here today to discuss H.R. 3424, and I am very proud to be an original cosponsor of this bill. H.R. 3424 will ensure that banking and commerce are not mixed and will prohibit national banks and financial holding companies from engaging in real estate activities, such as management and brokerage.

This is important legislation that Congress should support for a variety of reasons. First of all, allowing financial holding companies and national banks to participate in these activities would give them an unfair competitive advantage over real estate companies.

In fact, banks enjoy the benefit of a federal charter, including but not limited to having access to the Federal Funds Market, the payment system, and Federal Deposit Insurance. On the contrary, real estate companies lend their own money to consumers or have to borrow from commercial banks to make these loans.

Financial holding companies charter advantages can also benefit its non-financial subsidiaries, which results both in lower costs and tremendous tax advantages to the entity. Real estate companies do not have these benefits.

Real estate business derive their income from fees received when they originate or service real estate loans. National banks have a variety of fee-generating options other than fees on loans. We have to give real estate operations a chance to make a living. Besides real estate companies are generally smaller businesses and will be unable to compete with big banks; therefore, they would be forced out of business.

The banks benefit from government-imposed barriers to entry into the industry. To operate a bank, a state or federal charter is required. For real estate, on the other hand, they have lower barriers to entry and no government restrictions on market competition.

Allowing national banks to enter the real estate business will lead to industry consolidation, higher costs and fewer choices to consumers. Consumers can no longer shop around for the best deal, and banks will have no incentive to give consumers the best deal. Bigger institutions providing real estate services will not necessarily result in better services to consumers.

Mr. Chairman and members, I could go on and on and on. I think it is no secret where I stand on this issue. As a matter of fact, I think that most citizens who understand what this issue is all about would share the same position that I have. With that, again, I thank you, and I look forward to hearing from our witnesses today.

Chairman BACHUS. Thank you, Ms. Waters. The gentleman from Connecticut, Mr. Maloney, made a motion that all opening statements will be a part of the record. We will include your full remarks in the record.

The gentlelady from New York.

Ms. MALONEY OF NEW YORK. Thanks, Mr. Chairman. Thank you for calling this hearing. It is an important one. In the interest of time, we have two distinguished members of Congress waiting to testify, I will just place my comments in the record, and I look forward to the testimony, not only from my colleagues but from the panel you have assembled today. Thank you.

Chairman BACHUS. The gentleman from Kentucky, if you would like an opportunity—thank you.

At this time, we will hear from our first panel of witnesses. Mr. Calvert, who was a realtor in California, a good friend of mind, a respected member of this body, and Mr. Kanjorski, a member of this committee. And Mr. Kanjorski was one of the first members of Congress and I think you and I signed the first letter challenging the proposal to allow banks into the real estate brokerage business. We have not been shy about making our views made on this issue, nor has Mr. Calvert.

So at this time, we will hear the testimony from our first panel, and I do not know if you all have an order that you wish to go in. All right. We will go from left to right, from my left. Thank you.

Congressman Calvert?

STATEMENT OF HON. KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. I thank the gentleman. Thank you, Chairman Bachus, Ranking Member Waters and members of the subcommittee. Thank you for the opportunity to come here today to testify on behalf of H.R. 3424, the Community Choice in Real Estate Act. You all have written testimony in front of you, so I will do my best to keep my remarks short and to the point.

Anyone who has found an error on their monthly bank statement knows how hard it can be to get a bank to admit they made a mistake. On a very serious policy level, we are dealing with that very same issue today.

Before the ink was dry on the Gramm-Leach-Bliley Act, the banks petitioned to become involved in real estate brokerage and management. That was a mistake. And it has become that mistake, not this bill, that we are here today.

H.R. 3424 is merely a corrective measure for a situation that we never should have been put in the first place. The simplest solution is for the banks to withdraw their petition, and I will continue to call for them to do so. I introduced this bill with my friend, Paul Kanjorski, on December 6, 2001. It now has 245 cosponsors, certainly more than the majority of the House members.

Since this legislation directly deals with Gramm-Leach-Bliley Act, I would like to get, again, directly to the point. I was here when we voted on GLBA, and I remember it vividly. It passed the House by one vote. Many of us were given assurances that real estate brokerage and property management were not at all considered to be anything but commercial activities. So we voted for the bill and moved on. I am certain that had this issue been up in the air or in any way ambiguous this bill would not have passed.

I do not think this issue is the result of confusion. It is a direct result of the banking lobby trying to make an end run around con-

gressional intent. Fifteen House members of the Conference Committee on GLBA are cosponsors of the Community Choice in Real Estate Act. These members include Representatives Kanjorski, Waters, Tauzin, Dingell, Hyde, Gekas, Greenwood, Conyers, Towns, Markey, Waxman, DeGette, Stenholm, Hooley and Gutierrez.

Clearly, these conferees did not walk away from the conference with the idea that banks would be allowed to engage in real estate brokerage and management, nor did they leave the conference with the understanding that the Treasury could quietly slip this in while Congress debated other matters.

This is a matter for Congress to decide. H.R. 3424 speaks directly to who should make such a monumental decision and whether the Treasury Department and the Federal Reserve should have such broad power to usurp authority over what is clearly a commercial enterprise.

It is interesting to note that currently, and even if the proposed rule went through, real estate brokers could not open a bank. So what we are talking about here is one industry trying to dominate another while at the same time protecting themselves from meaningful competition.

When you get a chance I would like to invite you to ask the bankers that are testifying today what happened when Wal-Mart requested a thrift charter so they could offer depository services? The banks fiercely opposed this effort as a prohibited mixture of banking and commerce. So ask the banks, why are the immune from competitors? Because this is not about competition or one-stop shopping. It is about market dominance and conglomeration.

I have a great relationship with my local bankers, and I know they work hand in hand every single day to make America's dream come true. But the action here in Washington does not represent the close, symbiotic relationship between local bankers and their friends in the real estate industry. Bankers do not want to engage in real estate, their leaders simply want to corner another market, this time a commercial market, while protecting their own interests.

I would like to leave you with a few quotes from Congressman Jim Leach of Iowa, the sponsor of the Gramm-Leach-Bliley Act. "The movement to go beyond the integration of financial services and eliminate the traditional legal barriers between commerce and banking is simply a bridge we should not cross. It is a course fraught with risk and devoid of benefit and one for which there is no justification.

Such a step would open the door to a vast restructuring of American economic and the abandonment of the traditional role of banks as impartial providers of credit while exposing the taxpayers to liabilities on a scale far exceeding the savings & loan bailout. At issue with financial services modernization is increased competition. At issue with mixing commercial and banking is economic conglomeration, the concentration of ownership of corporate America," end quote.

From Congressman Bereuter during the debate on GLBA, "This member has been a fervent of keeping banking and commerce separate. In fact, this member is quite pleased that H.R. 10 does not contain a commercial market basket, which would allow the very

dangerous mix of commerce and banking, equity positions by commercial banks. We must avoid the problems that the Japanese have lately experienced because of such a dangerously volatile mixture of commerce and banking in their banking institutions."

And from Congressman Boehner, "We have learned from Japan that we need to go slow on mixing banking and commerce." Let me say that again, "Go slow on mixing banking and commerce. Let's see how we do with affiliation first, then return to the question of commerce and banking."

And, finally, again, to quote Congressman Leach in his opening remarks during the debate on GLBA, quote, "As we all know, there are complex issues involved in this legislation, and there will be differing opinions and judgments by members. One thing we can all agree upon, however, is that Congress needs to reassert its constitutional role in determining what should be the laws governing financial services instead of allowing the regulators and the courts to usurp this responsibility."

If the national banks do not withdraw their petition, it is time for Congress to act and reaffirm its overwhelming support for keeping banking and commerce separate. We must stop this blatant end run around congressional intent. It is time for the House to pass the Community Choice in Real Estate Act.

I am glad that I had the opportunity to come in front of this committee today and make my opinions known, Mr. Chairman, and I appreciate your consideration of this legislation.

[The prepared statement of Hon. Ken Calvert can be found on page 72 in the appendix.]

Chairman BACHUS. Thank you. Appreciate your remarks, Congressman Calvert.

Congressman Kanjorski?

STATEMENT OF HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. KANJORSKI. Thank you, Mr. Chairman, members of the committee. I am pleased to have the opportunity. I ask that my official remarks be made part of the record. A lot of what I wanted to say my colleague and cosponsor of this bill has already said.

I have no dog in this fight between the banks and real estate, other than I totally agree that it was my explicit intention when I sat in H.R. 10, and I think many of the members that signed onto that bill and finally voted its approval through the House, that we had no intention of mixing banking and commerce. And now, for some reason, based on this petition and new regulation, the question arises, isn't real estate banking?

Well, if it is, selling yachts is banking, selling automobiles is banking. Almost anything and certainly Wal-Mart is banking. And we will have opened the door to have a hybrid mixture of banking and commerce to the extent that there will be no lines of delineation.

When we are in the particular financial difficulties that we find ourselves today, it would seem compelling evidence for us to stop and say do we really want to organize a society that has one or 10 corporations that can do everything and anything everywhere? Or are we hearing a cry that bigness and hugeness and greatness may

have its inherent difficulties in social life, and maybe we should just hold back a little.

The reason I got into this bill is very simple. It really was not the fight between the interest of banks doing real estate work or real estate people wanting to get into the financing business. It was really an approach entirely different. I represent a very small congressional district in northeastern Pennsylvania. We have 176 municipalities, little towns. When we put on a Boy Scout drive, the people that lead those drives are generally in the business community.

When I first got elected to Congress in 1984 Saturn had announced that it was going to locate a Saturn plant somewhere in the country, and it came to my attention there were people that we wanted to make a competition in Pennsylvania. At that time I called a meeting, and I asked one of our chief bankers in the community to serve as chairman and we put on a outreach community, and we called a meeting of all the leadership in the financial services industry. And at that very first meeting, we had 40 bank presidents that showed up, and I knew them all. They ran little banks in little towns all over my district.

If we had that same competition today, Mr. Chairman, I would go to the same type of leadership, the chairman or president of a bank, and ask them to take the chairmanship and call a meeting together of the financial institutions and rather than having the meeting in a clubhouse we would meet in a closet, because there are only three or four banks that are in my district anymore. We have had such a gigantic growth in the last 18 years and particularly since the act and consolidation of the financial services in this country, it is not only banks, it is insurance companies, the security industry—almost every one of them too large to fail.

And now they are setting their sights, basically, on other businesses, but they can make some sort of an argument because money transfers that it is banking. But if you can make that argument that selling real estate and managing real estate is banking, you can make that argument about almost any business I can conceive of there is a financial transaction involved because that is what business is—a financial transaction. So using the logic of their argument, really anything is open to them.

I do not think we can afford that to happen in the United States. And going back to that Saturn project I was telling you about in my district, and many since, what the realtors represent to my district are they are the final profession left in business. The lawyers all belong to large law firms, the doctors all belong to hospitals, associations and HMOs, the banks are consolidating their home offices to either New York or Pittsburgh but they are not local. But when you call that meeting now, who shows up? It used to be insurance agents, but they are gone. Who shows up? It is the realtors. And we are about to clug off their head and say, "No, we do not need you as local leadership anymore."

So I pose the proposition that I think that failure to enact this or the failure of the banks to withdraw the petition for the regulation and the allowance tantamounts to a positive decision of this Congress, a very important pubic policy social decision, that we want to go into a society of incredible size of corporations that lit-

erally extract leadership from the local communities and have it reside in the core, huge metropolitan areas of our country and eventually of the world. And that it will be something that none of us dreamed of and probably would have feared if we had read it in the science fiction 25, 30, 40 years ago when we were in school.

I know we can make an argument, and I have lost a lot friends in the financial service industry, particularly in the banking, I do not see them anymore and they are not my friends anymore, and I miss that. I hope after all this is over they call me, because I think we have a lot of work to do in the years ahead.

But the one thing I am certain of is that the realtors have asked a very simple thing. This question of banking and commerce has to be decided. What is the proper role and who is the proper people to decide it? It is not the Treasury of the United States and it is not the Federal Reserve, it is the Congress of the United States. It is not only a legal question, it is a social question.

And it does not only have immediate impact over the next few years but has long-term ramifications of the very nature of the American society. And I would argue compellingly on everything my colleague has said and the few factors that I have thrown in that we must move forward as a Congress and show the nerve and the intestinal fortitude to say we did not intend and did not enact the authority in H.R. 10 to mix banking and commerce. This would be an act of mixing banks and commerce, and if it needs legislation to clarify it, it is this body, not the regulators, that should make that decision, because we represent the people.

And I want to just call the attention to the committee, we have 245 cosponsors. I have never seen a more diverse, philosophical, ideological, geographical and political dispersion of people. This is an overwhelming number of members of Congress that have expressed their intent on the record as to where they stand now, but I think at least another 100 that have not yet gone on the record.

I think we ought to give it time, as my colleague suggested, that if a withdrawal of the petition is the act that would disengage this, fine. But if that does not happen, this Congress should act on this legislation as speedily as possible, and I really do believe it has a very strong chance of going on suspension. I think we will get a two-thirds vote of the Congress to accomplish that end.

So I urge my colleagues to consider this legislation and join my colleague and myself and the other 243 members that are cosponsors of this and do the right thing. Thank you.

[The prepared statement of Hon. Paul E. Kanjorski can be found on page 77 in the appendix.]

Chairman BACHUS. Thank you. Do any members have questions for our first panel?

Mr. Sherman?

Mr. SHERMAN. Thank you, Mr. Chairman. I do not know if I have questions, I was not here for opening statements. I am very impressed by the presentation here. I want to associate myself with our two colleagues. I personally was angry when the regulators, with the encouragement of some others, decided to take my vote and yours in favor of a huge feast of additional powers for commercial banks. And before that feast was digested, to try to add another major dish to it, particularly because we all sat here, we

voted for financial modernization. We were not lazy, we were not stupid. We wanted to know what was in that bill.

And what was in that bill was a separation of commerce and finance. And none of us had a mental picture that somehow anything that needed to be financed was part of financial services. Many people, not all, when they buy a house, need to get a loan. This suit I am wearing was financed too, thanks to my friends at Visa, and an awful lot of my friends when they buy clothing or an appliance or food are doing that in a financial transaction involving a loan.

And as these panelists and colleagues have pointed out quite eloquently, if real estate and realty services are financial services, then what is the difference between a suit of clothes or a toaster. This is a battle between democracy and bureaucracy—ruled by the people or ruled by the bureaucrats. And let us, may we assert the power of the people, of Congress, or our committee, of our subcommittee to make these decisions.

These hearings should have come before—there never should have been a proposed regulation. Instead we should have waited several years to see if this great feast of additional powers was digested without food poisoning. And then three or four years from now, we should have such esteemed representatives as are coming before us today. We should make the decision in this subcommittee and our committee and figure out whether this additional set of powers should be conferred on banks.

We would then be worried, as we are worried today, about whether federal insurance was either endangered or was being used to subsidize a possible endangerment of traditional realtors. And, Paul, you pointed out how important they are in not just rural communities but in urban communities as well.

But in a few years, my anger would subside to the point where we could balance, or I could balance, along with everyone else on this subcommittee.

So with that, I just want to ask our panelists whether they have any additional comments. I hesitate to do that because their opening statements were so eloquent, what else could they add? But let me turn it over to them.

Chairman BACHUS. Did you all understand the question?

[Laughter.]

Mr. CALVERT. I will be more than happy to attempt to answer any questions the gentleman may have or any of the other members.

Mr. SHERMAN. Paul, do you have anything else to say?

Mr. KANJORSKI. Just let's do our duty, gentlemen and ladies.

Chairman BACHUS. All right. Thank you. The first panel is discharged, and we appreciate your attendance and testimony.

At this time, the second panel will take their seats. The second panel is made up—as you all come forward, I will go ahead and begin to introduce you. Mr. Joseph Face, Jr., Commissioner of Financial Institutions, Commonwealth of Virginia, on behalf of the Conference of State Bank Supervisors; Mr. James E. Smith, Chairman & CEO, Union State Banker & Trust Clinton, Clinton, Missouri, President of the American Bankers Association, testified be-

fore our committee on many occasions. We welcome you back, Mr. Smith.

Mr. George T. Eastment, III, Executive Vice President, Long and Foster Real Estate, on behalf of Real Estate Services Providers Council; Mr. Stephen Baird, Baird & Warner, Chicago, IL, on behalf of Realty Alliance; Mr. Patrick Grabill, former NAR Director for Coldwell Banker King Thompson, current president, King Thompson/Holzer-Wollam Realtors.

At this time, we will start with Commissioner Face. And because of the large panel, ask the panel to try to keep your remarks to five minutes, if possible. Thank you.

STATEMENT OF E. JOSEPH FACE, JR., COMMISSIONER OF FINANCIAL INSTITUTIONS, COMMONWEALTH OF VIRGINIA, ON BEHALF OF THE CONFERENCE OF STATE BANK SUPERVISORS

Mr. FACE. Good afternoon, Chairman Bachus, Congresswoman Waters and members of the subcommittee. I am Joe Face, Commissioner of Financial Institutions for the Commonwealth of Virginia, and chairman of the Legislative Committee of the Conference of State Bank Supervisors. Thank you for asking us to share the views of CSBS on bank real estate brokerage and management authority and on H.R. 3424, the Community Choice in Real Estate Act.

As the organization that represents the primary regulators of more than 70 percent of our nation's banks, we appreciate this opportunity to discuss the states' experience with real estate brokerage. We salute H.R. 3424 sponsors for their appropriate emphasis on competition and choice for communities and consumers. The legislation in its current form, however, would not promote these goals.

All of us are clearly most concerned with the welfare of consumers. We suggest, however, that the experience of the state banking system offers a valuable perspective on how to create an environment that offers consumers responsible, competitive options.

As you may know, CSBS has strongly supported the rulemaking proposed by the Federal Reserve and Treasury Department, which would allow financial holding companies and financial subsidiaries to offer real estate brokerage and real estate management services.

While CSBS agrees that real estate brokerage and management are activities that are financial in nature and that these activities are both incidental and complementary to banking, this should not be the thrust of our policy debate. As Representative Calvert and the sponsors of H.R. 3424 have appropriately said, advancing choice for consumers should be at the core of our discussion.

Twenty-nine states and the District of Columbia currently allow their state-chartered banks to offer real estate brokerage services. Despite the availability of these powers, only a few state-chartered banks are actively engaged in real estate brokerage. Among the banks that do use these powers, state bank supervisors have not encountered any significant safety and soundness or consumer protection concerns related to these real estate activities.

The states' experience supports the Federal Reserve's and Treasury's interpretation of real estate brokerage as an appropriate activity for bank holding companies. Based on this experience, we generally support the agencies' determination that real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity.

We qualify this support, however, with the stipulation that financial institutions should conduct these activities in compliance with applicable state laws, prudential operational safeguards and appropriate consumer protections. With these safeguards, consumers will benefit from the enhanced competition of new providers in real estate services.

The ability for state banks to test new products, services, powers and structures on a state-by-state basis has helped policy makers identify best practices for the delivery of financial services before granting these powers on a nationwide basis. This model has been very effective in promoting safety and soundness and ensuring consumer protection, while fostering innovation within our banking system.

While few banks currently engage in real estate activities, a growing number of securities firms, insurance companies and notably real estate firms are blending banking and real estate services. H.R. 3424 would make this evolution unfairly one-sided by preventing banks from offering their customers the same breadth of services.

State bank supervisors seek to promote credit availability and economic development in all communities in our states. We would strenuously oppose any system that would allow a few institutions, be they banks or non-banks, to dominate the financial markets and limit choice for our local communities. Like banking, real estate is a service business. And as in banking, local providers often know their customers' needs best. If this is truly the case, government intervention to protect these local service providers should not be necessary. Increased competition in real estate will benefit not only consumers and their communities, but also the service providers that are eager to earn their business.

Again, we commend this committee for its attention to this challenging issue. Thank you for the opportunity to testify. I will look forward to your questions.

[The prepared statement of E. Joseph Face Jr., can be found on page 144 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Smith, or President Smith?

STATEMENT OF JAMES E. SMITH, CHAIRMAN AND CEO, UNION STATE BANKER & TRUST CLINTON, CLINTON, MISSOURI, PRESIDENT OF THE AMERICAN BANKERS' ASSOCIATION

Mr. SMITH. I want to thank you, Mr. Chairman, for holding this hearing. I do have some charts to show you, and if it is permissible, I would like to ask staff to distribute copies of these charts for your to review.

I believe that bankers and realtors have more in common on this issue than the rhetoric suggests. We both believe that customers deserve the best possible service. We both want customers to have

many choices so that they can seek out that agent or company that the trust most. And we both believe that any financial service should be provided in a safe and sound manner, including adhering to all licensing, sales practices and continuing education requirements.

If banks could offer real estate services, consumers would have more choices of real estate firms when buying or selling a home. Real estate agents would have more choices of potential brokerage firms. And brokerage firms would have more choices of companies to partner with, providing new sources of capital and technology. By prohibiting bank involvement in H.R. 3424, results in fewer choices for everyone.

As we begin our discussion, it is important to note that combining brokerage and banking services is not a new or unusual activity. Real estate firms do it, insurance companies do it, securities firms do it, and well over half the depository institutions in this country, including many of the largest banks, can do it. In fact, my community bank in Clinton, Missouri has the authority to provide real estate brokerage.

Like most banks that could provide real estate today, I have yet to move into this line of business, but I am rethinking my bank strategy on this matter. I have to. Even in my small town with 9,600 residents, it is obvious that the world is changing rapidly. I am losing customers to real estate firms that aggressively offer mortgages and insurance. Since the customer often goes to the real estate first, I lose out on the ability to offer this product.

And the choices for customers are getting fewer and fewer as aggressive firms like Cendant, which owns Century 21, Coldwell Banker and ERA, and Re/Max gobble up small locally owned real estate firms. Cendant, for example, has averaged about one acquisition per week since 1997. This trend is obvious in the pie chart on my right, showing that the real estate market is far more concentrated than banking.

In my town, Re/Max is the largest of the three real estate firms. Its mortgage lending and insurance operations are much bigger than mine. The number two real estate firm seems to be doing well, but the smallest agency seems to be struggling to compete. I wonder if it has the marketing and financial resources to compete with Re/Max. What are its choices? Continue to struggle, go out of business, sell out to Cendant. Would it not be better for it and for my community if it could partner with my bank? How is the National Association of Realtors helping that agency or my community by working to preclude such an option for them?

My experience is not unique. My fellow community bankers are witnessing the same trends and believe that their ability to offer real estate services would significantly benefit their customers and communities. The packages many real estate firms offer, including those provided by the outstanding real estate firms with me here on this panel, provide valuable cost, convenience and service options. The posters on my right show examples of these combinations.

GMAC, backed by General Motors, owns GMAC Mortgage Corporation, GMAC Real Estate and GMAC Bank, a full service bank chartered two years ago. They have 1,300 real estate offices and

20,000 agents and ranked eighth in mortgage originations in the first quarter of this year. Such combinations of services are good for consumers. The ABA believes that all banks should have the same opportunity to meet the needs of our customers.

The Gramm-Leach-Bliley Act is a solid, well thought out piece of legislation. It promotes competition and enables Congress to avoid becoming embroiled in every competitive issue. The Fed and Treasury proposal on real estate follows exactly the process Congress set forth. H.R. 3424 would put Congress back in as referee for future competitive disputes.

In conclusion, let's look ahead, not backward. We want to work with realtors to make the most of the skills and advantages each side brings to the table. Above all, we want to be able to partner with realtors to provide good, honest real estate, real estate services to America's homeowners and home buyers. Thank you very much.

[The prepared statement of James E. Smith can be found on page 167 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Eastment?

STATEMENT OF GEORGE T. EASTMENT, III, EXECUTIVE VICE PRESIDENT, LONG AND FOSTER REAL ESTATE, INC., ON BEHALF OF REAL ESTATE SERVICE PROVIDERS COUNCIL, INC.

Mr. EASTMENT. Good afternoon, Mr. Chairman and members of the subcommittee. My name is George Eastment, I am the Executive Vice President of the Long and Foster Companies, a full service home ownership company headquartered in Fairfax, Virginia.

Long and Foster has 200 residential real estate brokerage offices that engage in real estate sales and leasing in seven Mid-Atlantic states and the District. Long and Foster also offers a full array of mortgage services through Prosperity Mortgage, which is a joint venture of Long and Foster and Wells Fargo Home Mortgage.

We also offer a full line of personal and commercial insurance through Long and Foster Insurance Agency, a wholly owned insurance agency. Mid-States Title, another wholly owned company, runs five joint ventures that conducts real estate settlement in the Mid-Atlantic area. Our firm has 12,600 sales associates and employees, of which 9,000, including myself, are members of the National Association of Realtors.

I am a past Chairman of The Real Estate Services Providers Council, known as RESPRO, and I currently serve as a member of its board of directors and Executive Committee. RESPRO is a national association of approximately 200 residential real estate brokerage, mortgage, home building, title and other settlement service companies who promote an environment that enables providers to offer one-stop shopping for home buyers across industry lines.

Together, RESPRO members who are in the real estate brokerage business closed over 1 million residential real estate transactions last year, utilizing over 300,000 sales associates and 78,000 employees. Like the majority of the nation's top 350 residential real estate brokerage firms, most RESPRO real estate broker members also offer mortgage, title, closing and other settlement services.

In fact, according to a 1999 study conducted by the independent consulting firm of Weston Edwards and Associates, 72 percent of the top 350 real estate brokerage firms offered mortgage services and closed $22 billion in mortgage loans in 1998 and realty and builder-based lending accounted for about 10 percent of all purchase money mortgages that same year. Forty-five percent of these same firms offer title or closing services and personal lines of insurance.

Mr. Chairman, RESPRO favors open competition in the real estate marketplace, and we believe that any bank should be able to compete with us in providing home buyers with one-stop shopping programs. For this reason, we oppose H.R. 3424 which would prevent affiliations between nationally chartered banks and real estate brokerage firms.

All available evidence shows that home buyers prefer one-stop shopping and that realty-based one-stop shopping programs offer them potential benefits. The most recent consumer survey in this area was performed in March by Harris Interactive, the parent of the Harris Poll. Harris surveyed over 2,000 recent and future home buyers and found that 82 percent of home buyers prefer using a one-stop shopping service for their home purchase and 64 percent of those home buyers who recently did use realty-based one-stop shopping service also had a much better overall purchase experience.

Other studies, some of which are described in my written statement have found that services offered through realty-based one-stop shopping programs are competitive and even lower in cost than those offered by independent firms. RESPRO does not believe that the entry of financial holding companies and national banks would change the potential consumer benefits of realty-based one-stop shopping programs.

Over the last 20 years, a number of financial conglomerates have entered the real estate brokerage business: Sears Roebuck, Metropolitan Life, Merrill Lynch, General Motors, Prudential Insurance Company, Cendant Corporation and Warren Buffet's Berkshire Hathaway.

On the surface, these companies appear to have significant competitive advantages over traditional real estate brokerage firms. Sears even had access to federally insured deposits through its affiliate, Sears Savings Bank. But Sears, Merrill Lynch and Metropolitan Life have since left the real estate brokerage business. While Prudential, GM, Cendant, and Berkshire Hathaway remain competitors, their presence has not changed the basic character of the real estate brokerage marketplace. In fact, we believe that their entry has contributed to the development of a wider range of services and has caused traditional real estate brokerage firms to be more efficient and more consumer-focused than we were before.

In summation, I would say that at Long & Foster, we would not fear banks being in the business. They have a very different management style than realtors. We believe that we can compete heads up with them. And, basically, a real estate company, whether it has five agents, 9,000 or 90,000 basically has to do the same thing every day to win those customers over.

Mr. Chairman, I thank you for the opportunity to testify. I would be glad to answer any questions.

[The prepared statement of George T. Eastment can be found on page 97 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Baird?

STEPHEN W. BAIRD, BAIRD AND WARNER, CHICAGO, IL, ON BEHALF OF REALTY ALLIANCE

Mr. BAIRD. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Stephen Baird, and I am President and CEO of Baird and Warner. Baird & Warner has 35 residential brokerage offices throughout the Chicago metropolitan area, and we are currently ranked 12th largest residential brokerage company in the United States.

Baird & Warner Financial Services is a wholly owned subsidiary providing mortgage services to our clients. The company currently employs approximately 1,600 employees and independent contractor agents. As a five-generation family business, we are the oldest real estate company in the United States, dating back to 1855. Baird & Warner has been a member of NAR since NAR's inception.

I am currently on the Board of Directors of the Realty Alliance. The Realty Alliance consists of 45 of the largest independently owned and operated real estate companies in America, and I speak on their behalf.

With NAR's escalating opposition to banks entering the real estate business, our members have grown increasingly concerned that NAR's position and vehemence would have a negative impact on consumers, our companies and the industry as a whole. Because of that concern, the Realty Alliance began a serious debate on the pros and cons of this issue. At the end the debate, the Realty Alliance voted to support the Fed regulations to encourage banks to enter the real estate business by a vote of 41 to four. The following are some of the reasons for that decision.

Number one, open competition is the American way. As the real estate industry has changed, real estate brokerage companies have looked to diversity and enter new businesses, such as mortgage, title and insurance. Just as we should be able to compete in these businesses, so should other industries be able to enter and compete in our business. Open competition is the American way. Open, free markets are superior to closed, controlled or regulated markets.

There are certain areas in our business that could use a greater level of competition. Nationally chartered banks would provide competition against other large financial entities, such as Cendant, Prudential and GMAC. This would certainly benefit the industry as a whole, since today these companies have little competition.

Number two, capital is good for our business. Residential real estate has always been a capital-short industry, and we should encourage any efforts to bring more capital to our business. We have struggled for many years to find enough capital to expand our businesses, to innovate and to do research and development. With open markets, capital would most certainly be available. Furthermore, capital provides liquidity for real estate brokerage firms of all sizes, large and small.

Three, competition will make us better. Competition makes us all better. NAR's argument that banks are anti-consumer makes no sense at all. How could real estate brokerage be less competitive and anti-consumer if there are more companies offering new and different services? Frankly, I think NAR is afraid of a new form of competition. We are not.

Four, RESPA reform. Our industry is facing RESPA reform in the near future. RESPA reform will have significant impact on how we practice our business and our ability to grow our companies. We feel it would be hypocritical to work towards RESPA reform by building a model for one-stop shopping while prohibiting certain financial entities from participating in that solution. One-stop shopping should be offered by and available to everyone.

Five, We should welcome new players. Our industry has succeeded for many years by on open, competitive marketplaces, while all players can compete on an even footing and welcome new entrants into the marketplace. Over the years, many companies have entered our business: Sears, Merrill Lynch and Metropolitan Life. They have brought new ideas and new ways of doing business. We have changed and grown and prospered. The challenges have only make us better.

Six, and last, banks are already in our business. Currently, over 25 states permit state chartered banks to engage in real estate brokerage, either directly or through a subsidiary. Also, federal savings banks are authorized through service corporations to engage in real estate activities. We already compete with large financial players, such as Cendant, Prudential and GMAC. We see no difference between them and a large bank or a federal savings bank.

Mr.Chairman, the National Association of Realtors does not speak for the vast majority of Realty Alliance members on this issue. We hope that you and members of the subcommittee will consider our views on the issue as you consider this legislation. Thank you for the opportunity to testify, and I would be glad to answer any questions.

[The prepared statement of Stephen W. Baird can be found on page 91 in the appendix.]

Chairman BACHUS. Thank you.

At this time, I am going to recognize a member of the committee, Mr. Tiberi from Ohio.

Mr. TIBERI. Thank you, Mr. Chairman. It is an honor for me to introduce to the committee today a constituent and friend who was recently appointed as chairman and CEO of a company called Homestead Communities. Before that, Patrick Grabill was the CEO of a central Ohio company called Coldwell Banker King Thompson. And he was the founder of his own company, but during his tenure he expanded a 60-sale associate firm, Mr. Chairman, to its current size of 800. And I think, actually, officially this week, he became the former CEO, resulting in over a billion dollars in sales for the combined King Thompson Coldwell Banker firm.

For over two decades, Patrick Grabill has been heavily involved in the real estate associations at the national, the state and the local level. He is the former president of the Columbus Area Board of Realtors, which I was a member. And on a personal note, Pat is known in central Ohio as an innovator. He is someone who is

respected by both his peers, his competitors as well as the community as a whole. And I am sure glad that I am not competing with he or his company today as a realtor.

With that, here is Patrick Grabill.

STATEMENT OF PATRICK GRABILL, FORMER NAR DIRECTOR FOR COLDWELL BANKER KING THOMPSON, CURRENT PRESIDENT, KING THOMPSON/HOLZER-WOLLAM, REALTORS

Mr. GRABILL. Thank you, Congressman Tiberi. Can I just leave now? That was awfully nice of him.

[Laughter.]

Good afternoon, Mr. Chairman and the members of the subcommittee. My name is Patrick Grabill. I am enjoying my 30th year as a realtor in the central Ohio area. By way of background, which Mr. Tiberi gave, so I will condense that, I speak to you as a citizen, an independent realtor and a small business owner.

Over the course of building my prior business, I served my industry in various capacities in the realtor associations, including local board president, state trustee, national director, member of numerous committees and task forces, including the state and national association finance committees. I take no pleasure in the statements I make here today, which are in direct opposition to the position of the National Association of Realtors.

The leaders of that association, both volunteer and staff, are bright, decent, well-meaning people trying to do what is right. I believe that the structure of this trade association and its self-perpetuating, self-protecting tendencies have dictated their conformance and desire to close ranks on this issue.

With respect to H.R. 3424 and Senate bill 1839, the NAR has embarked on a vigorous campaign to position itself as the representative of the entire real estate industry. My purpose in coming before you is to underscore that there are numerous other opinions within NAR that are not being heard precisely due to the structure of that association.

Rather than putting forward a balanced information program on this issue, and it is a complicated issue, a campaign was launched by NAR entitled "Stop the Big Grab."

This well-funded and highly focused effort comes complete with a cartoon character of an octopus meant to be the banks reaching out to engulf the industry. Enormous political pressure is being brought to bear on association leaders at all levels and congressional members to support their position on this issue.

I could cite other incidents of this but there were in many other incidents opposition to NAR's positions. These opponents are ridiculed, labeled disloyal or out of touch and generally just drowned out. The leadership charges right ahead. And that is a result of what is known in the industry as a three-way agreement. This requires as real estate salesperson to join all levels of this association: local board, state and National Association of Realtors. Otherwise, they cannot gain access to the Multiple Listing System or use the term "realtor," which is a trademark owned by the National Association.

The three-way agreement generates an income stream to the National Association of Realtors that is substantial. I believe the dues

income generated plus the non-dues revenue and income from reserves exceeds $100 million annually. The level of income obtained in small amounts from a vast number of people provides little accountability other than a 500-member board of directors which meets semi-annually.

The leadership team is thus given great latitude to craft issues and a response to those issues. The general members have little voice and no ability to vote with their wallets. They cannot leave the association because they will be cut off from the only source of local data exchange—the local Multiple Listing Systems. Thus, NAR's claim to represent 800,000 members, to me, rings hollow.

I believe that NAR's position on this issue is as much about protecting the income and interests of the trade association as about protecting the ability of its members to represent buyers and sellers in real estate transactions.

If banks enter the real estate business, they could ask questions currently being asked by many of the larger regional brokerages today. Today, the NAR can largely ignore these concerns because there are only a few, maybe 100, large companies, and NAR perceives its interests to lie with the masses, the 800,000 plus individual members. With larger, better capitalized firms, such as banks, asking questions of accountability and values for money spent, these voices could grow louder, threatening NAR's role as the sole voice for organized real estate.

I do have concerns about banks broadening their scope of activities into the real estate brokerage and property management businesses. Protections against undisclosed tying and firewalls should be required to protect against abuses, ensuring a level playing field. But to assume that bankers are less ethical, virtuous or less consumer friendly than realtors are is at the very least a stretch. It would seem to me that given the less scorched-earth approach by the National Association of Realtors a middle ground of compromise could and should be reached on this issue.

Open competition in the marketplace would, in my opinion, provide a method for consumers to employ who they believe will act in their best interest. I believe the competent, caring, community-minded professionals I have worked with over the years will be the consumers' choice if they are given a chance to make a choice. Realtors need not be concerned about competition, they have lived with it all their lives, providing they stay responsive to the consumers' needs, just like any other small businessperson.

To follow NAR's logic, realtors should not be allowed to participate in mortgage, title or insurance businesses. This is ludicrous because consumers have demonstrated that they would like the home buying process simplified, streamlined and made more affordable.

Chairman BACHUS. Mr. Grabill, if you could wrap up.

Mr. GRABILL. Yes, sir. In summary, at the end of the day, the fundamental question is with every other industry faced with new methods of competition and alternate delivery systems, why should traditional real estate be granted special protections? I thank you, Mr. Chairman.

[The prepared statement of Patrick Gabrill can be found on page 156 in the appendix.]

Chairman BACHUS. Thank you. At this time, it is the intention of the chair to recognize Mr. Tiberi and then break for a vote. So if other members other than Mr. Tiberi want to go back, when we come back Mr. Watts will be recognized.

Mr. WATTS. Mr. Chairman, I am not sure I am going to be able to come back.

Chairman BACHUS. Are you going to return to the hearing? Well, if Mr. Watts would like to ask questions at this time and then we will recess. And if any members want to be excused at this time.

Mr. WATTS. That is fine. Thank you, Mr. Chairman. You caught me a little off guard. I just wanted to ask—I am glad to see Mr. Eastment here since word must have gotten back to him that I was using his company as one of the models. I thought they were on the other side of this issue at the outset.

Mr. EASTMENT. I think, sir, that is one of the problems, that everyone assumes that the other side speaks for realtors, and I do not think that is necessarily the case.

Mr. WATTS. That is fine. I did not mean that as a put-down. I think it is very—I intended it as a compliment. Let me just ask you about something Mr. Grabill raised, Mr. Eastment, and that is the tying issue. How are you companies dealing with that and how would you suggest we deal with that if banks are in this business, to prevent kind of the appearance of imposition on the client that once you get in the door you cannot get out?

Mr. EASTMENT. The question on the tying, the way that works is that the real estate agents have to pay dues, as he said, to the national, state and local—

Mr. WATTS. I do not mean tying in that sense. I mean tying of services where once you—one of the concerns that has been expressed with banks getting into real estate is if they are real estate brokers, then that gives them a means of requiring or at least applying more pressure to consumers to use their lending products.

And I was just wondering how your companies are dealing with that? Are there rules that currently govern your companies that keep a particular person who is buying a home through your real estate company from being required to use your mortgage company, in other words?

Mr. EASTMENT. Well, I think RESPA is a very important issue here in that we have to follow all of those guidelines and absolutely nothing can be required. We deal with it through disclosures. For example, after 20 years in the mortgage business, we have achieved a 16 percent capture rate, and the individual agent is free to recommend where or when their buyers go to a particular service provider.

Mr. WATTS. Sixteen percent capture rate means that 16 percent of—

Mr. EASTMENT. Sixteen percent of our buyers are using our mortgage company.

Mr. WATTS. Oh, I see.

Mr. EASTMENT. And so that 84 percent of them are going somewhere else. We do not pay our agents or our managers. We are not allowed to pay them. There is no financial incentive. And I would assume anyone else in the business would also be subject to those RESPA rules. And the nature of the business is those agents are

independent and they do not want anything to damage their relationship with their client, and they will use our services or anyone else is only if they think those people can perform.

Mr. WATTS. I did not realize there was anything in RESPA that required no tie-in. I mean I know that—I thought RESPA was a disclosure thing that says we cannot—I mean maybe I am just wrong, but is this an industry standard? Are all companies that have the whole range of services in their company fully disclosing that there is no tie required?

Mr. EASTMENT. We have to provide—I have with me, this is a copy of our disclosure that we give to our buyers upon contact that does outline our interest in these various companies.

Mr. WATTS. And that is required by RESPA?

Mr. EASTMENT. Yes. We must give that disclosure, and, as I said, the agents choose or they make their recommendations based upon who they feel can provide the best service. Sometimes that is us, sometimes it is not.

Chairman BACHUS. Mr. Eastment, I have been advised we have got about two and a half minutes left on a vote on the floor. So we are going to recess the hearing until approximately 4 or 4:15. As soon as we are through we will return and start the hearing. Thank you.

[Recess.]

Chairman BACHUS. At this time, I am going to recognize—the gentleman from Oklahoma does not have any questions for the panel, so I am going to recognize the gentleman from Ohio for questions.

Mr. TIBERI. Thank you. Thank you, Mr. Chairman.

First question, Mr. Eastment.

Mr. EASTMENT. Yes, sir.

Mr. TIBERI. Are you a licensed realtor?

Mr. EASTMENT. Yes, I am.

Mr. TIBERI. So you are a member of the National Association of Realtors.

Mr. EASTMENT. For the last 30 years.

Mr. TIBERI. In your opinion, as a licensed realtor, and you said you are opposed to this bill, why do you believe the National Association, in your mind, just speaking on your own personal behalf, not the company's behalf, why is the National Association for this bill?

Mr. EASTMENT. Quite honestly, I am not sure about really why they are against it. I do not understand it. I think it is irrational, but I cannot begin to understand their arguments or see any credibility in them. So what is exactly in their minds I do not know.

Mr. TIBERI. You have obviously peers, friends in the business and employees or independent contractors that work for you. What is the general nature of thinking from people in the profession that you come into close contact with regarding this issue?

Mr. EASTMENT. I have received numerous questions about this from our agents and our managers, and the vast majority are, number one, even not aware of the issue, and another substantial number really could care less. I think the typical real estate agent is interested in day-to-day issues, how is the market, what does money cost today, where is my next deal coming from, what is my

commission split? And I think there is only a very small percentage of realtors who really support NAR on this subject.

Mr. TIBERI. Mr. Baird, you mentioned in your testimony that 41 of your members, I assume brokers?

Mr. BAIRD. They are large, independent real estate companies like ours. Long & Foster is a member.

Mr. TIBERI. And all 41—41 to 40 voted to support the Fed-Treasury proposed rule, according to your testimony. All 45 of those voters, I assume they are all licensed real estate brokers and members of the National Association?

Mr. BAIRD. Oh, yes. All of them are, and they have numerous agents that are members, in the—I do not know how many there are, I think 60,000 or 80,000 throughout the whole organization.

Mr. TIBERI. Just to follow-up with the same question I asked Mr. Eastment, what are your thoughts in terms of why you believe the National Association is opposed to the rule?

Mr. BAIRD. My personal opinion, and I have also been a realtor, not as long as George, but 22 years, my person opinion I am also perplexed why they would take this position. I think it has to do with some of the remarks that Pat made earlier that they somehow got onto this issue, put their, for whatever reason, marketing, PR muscle behind it. And now it is kind of become bigger than life.

Mr. TIBERI. You are primarily in the Chicago market?

Mr. BAIRD. Yes.

Mr. TIBERI. What percentage of the market in Chicago do the three largest real estate brokerage firms handle?

Mr. BAIRD. The three largest companies?

Mr. TIBERI. Ballpark. Yes.

Mr. BAIRD. Oh, 30 percent, 35 percent.

Mr. TIBERI. Mr. Eastment, in your market, what are the three largest brokerages?

Mr. EASTMENT. In the Washington area—we are in many markets. If we took the Washington area here, I would say the three largest companies are probably 35 to 38 percent. And if I may add to my previous comment, the real estate brokers in RESPRO represent about 40 percent of the membership of NAR in the companies that are our members.

Mr. TIBERI. Mr. Grabill, same question to you. In the central Ohio market where you are company has been located for your entire career, what are the three largest?

Mr. GRABILL. I was just trying to add it up. It is close to 50 percent.

Mr. TIBERI. The three largest?

Mr. GRABILL. Yes.

Mr. TIBERI. In your testimony, you talk about 800,000 members of the National Association, and those members, I assume you are including part-time realtors, brokers, full-time realtors. And you made the statement in your written testimony that the NAR really does not represent them. Can you kind of further elaborate?

Mr. GRABILL. Well, if you are a broker and you are a member of the local board of realtors to get access to the Multiple Listing System, all of your agents are required to become members or you cannot employ them. So I do not know if that exactly answers your question, but that is how it is composed.

Mr. TIBERI. But just if I could follow-up, Mr. Chairman. If you are a member of the National Association of Realtors, whether you are part-time or full-time, why—I am trying to figure out why the statement that the National is not really representing 800,000 members.

Mr. GRABILL. There are an awful lot of members that are not terribly active in the industry. They may be part-time, they may work for banks, but to gain access to the Multiple Listing they have got to be members of the association. Or they may be appraisers or other fields of related real estate. They are not necessarily all real estate practitioners, but they are required to join all three levels of the association to get access to that data. So there is no distinction made between part-time, full-time, ancillary careers or anything else.

Mr. TIBERI. Thank you.

Thank you, Mr. Chairman.

Chairman BACHUS. Mr. Bentsen?

Mr. Barr?

Mr. BARR. Thank you, Mr. Chairman. One thing that I am a little bit unclear on, several of you all used the term, "one-stop shopping." You also used the term, "foster competition." I am a little bit confused. How does one-stop shopping, where you would have a number of different services, including now real estate services available through the same entity that provides money and insurance and so forth, exactly how does that type of one-stop shopping, which may or may not be good, I do not think there is anything magical about one-stop shopping, that can be a monopoly also as one-stop shopping, how does that sort of one-stop shopping foster competition? It may be something that you all want to do and there may be some benefits to it, but I am not sure that fostering competition is one of them.

Mr. EASTMENT. I will take that. One-stop shopping came about because consumers wanted it. In this area, for example, when you go into Giant, you used to go in to buy food. Now they have a dry cleaners, they have a drugstore.

Mr. BARR. Excuse me just a second. In terms of this piece of—these proposed regulations, which consumers are you talking about? It is my impression that these proposed regulations were not based on consumer input, they were based on folks here within the government making what seems to be a fairly quick decision after the passage of Gramm-Leach-Bliley before we have really had much of a chance to really see how it was developing in the real world.

I am not quite sure what consumer or customer input there was, at least for this set of proposed regulations. I understand generally what you are saying, but in this case, there has not been that public input. As a matter of fact, the public input seems to be in the other direction with regard to the regulations.

Mr. GRABILL. Could I respond to that, Congressman?

Mr. BARR. Well, I really want maybe if you could just finish following up on that, please?

Mr. EASTMENT. Yes. I was addressing the question of why we got into one-stop shopping. I am not aware of what consumer input there was or was not in terms of the regulation.

Mr. BARR. Okay. Are any of you all, because, again, this was a decision made by the federal agencies pretty much on their own to move forward with these proposed regulations. So it is my impression that it was not based on consumer input. Do you all know otherwise?

Mr. GRABILL. Sir, I do not have any information about the government agencies, but I would believe it is the result of the fact that we are watching the marketplace change underneath our feet as this is happening. As an example, a company I just separated a relationship with, on an amiable basis, has grown their mortgage operation to the second largest mortgage operation in the country in the last four years from being pretty much nowhere on the charts.

That is consumer-driven, that is not corporately driven. The consumer has found a value in that relationship. And if I was sitting in a banker's seat, I would see that happening. I know it is happening in my marketplace because bankers that I know of wondered why we are growing so rapidly in providing that service. I believe it is consumer-driven, and I think it is a result of that sea change in the marketplace.

Mr. BARR. We have in my district, in Georgia, a lot of bankers, a lot of large banks, community banks whom we work very closely with. There are a lot of realtors, a lot of real estate companies. And to be honest with you, in the eight years that I have served in the Congress, we have not gotten complaints from consumers that banks dealing with financial services and the delivery thereof and real estate agents and brokerages dealing with real estate has created a problem for consumers.

Have you all seen studies that indicate that people's needs, their ability to find homes and get them into homes is being hampered under the current legislative system that we have and have had for many, many years?

Mr. GRABILL. I have not perceived a problem from that sense. I have perceived a competitive situation, and, again, I am seeing the landscape as a real estate practitioner change rather dramatically when people like Warren Buffet come into the real estate business, corporations like Cendant and Prudential and other major corporate entities do that. There is a shifting in the landscape regardless of what happens in terms of this legislation. And I think the real estate industry is reacting to that, and I assume that the banks are reacting similarly.

Mr. BARR. But the changing landscape, for example, with regard to financial services generally, clearly was a legitimate basis on which to take up the Gramm-Leach-Bliley bill. The Glass-Steagall Act was woefully outdated. They did not even have computers back when that went into effect. So I think there was a very legitimate basis that the entire financial system out there, regulatory system, had not kept up with realities and customers were not being properly served.

I do not see the same thing, though, with regard to the delivery of real estate services. The housing market is doing well, the real estate business is doing well. It is keeping up with the changes in technology. I am just not quite sure what need that is out there that you all seem to talk about as providing the basis for sup-

porting the regulations that the federal government is proposing here.

And at a minimum, would not it make sense, without prejudicing whatever the government might do in the future, let's just see how the process that we change fairly dramatically in Gramm-Leach-Bliley works itself out to see if there are in fact areas out there, real estate or others, that are not being properly met by this new framework? I guess the question is what is the rush to judgment?

Mr. SMITH. If I may give you a personal example that is happening in Clinton, Missouri, which is a community of 9,600 people. We have three real estate agencies in town. One is a Re/Max, one is a Coldwell Banker, and one is an independent agency. There are five banks in town.

The RE/MAX office started about three years ago making mortgage loans, and so now somebody comes to Clinton, Missouri looking for a home, they go in and they sign a contract to buy a home. They walk into the next office, do the mortgage, walk into the next office, get the title insurance. I do not get the opportunity to see that customer or present my product to that customer unless they happen to walk into the bank.

And one to four family residential loans are well over half of my loans at my bank. So when I stated in my oral statement it was making me rethink my strategy, I am going to have to rethink how I can have the opportunity to present my bank products to that customer so they have a choice.

Mr. BARR. And wouldn't that be fair to say, well, competition ought to guide that rather than the federal government coming in and artificially perhaps dictating something?

Mr. SMITH. Well, I have real estate powers, but if it is taken away from me, I will not have the opportunity to be competitive in that nature.

Mr. BARR. What is being taken away?

Mr. SMITH. If the real estate brokerage powers, which my bank today has, if I want to get into the market, my bank has the authority to do that. But if H.R. 3424 passes, that could be taken away and—

Mr. BARR. No, it would not. H.R. 3424 simply maintains the status quo before the proposed rules would go into effect. It does not take anything away.

Mr. SMITH. Well, it would eliminate national banks from being involved.

Mr. BARR. It does not take anything away from the powers that banks currently have.

Mr. SMITH. As I understand it, it would eliminate national banks from getting involved in real estate brokerage powers.

Mr. BARR. But they are not involved now.

Mr. SMITH. They are not involved now.

Mr. BARR. So it does not take anything away.

Mr. SMITH. But in my community, the smallest bank is a national bank, so I am not sure that they should be eliminated from having the opportunity to do real estate powers. If credit unions can do it, savings banks can do it, if I can do it, if RE/MAX can do it, I am not sure why we would want to eliminate the national banks, which 90 percent of the national banks are community

banks. And I am not sure why we would want to eliminate them from being competitive in this marketplace.

Mr. BAIRD. Congressman, if I may add to that?

Chairman BACHUS. Go ahead.

Mr. BAIRD. I do not think it is an issue of creating less of an environment. By adding another player into the mix, you are going to increase the amount of competition. Today, what is happening in our market is there is a move towards one-stop shopping. Different companies are approaching it from different ways. They are creating different combinations. You are eliminating one element from playing in that game. It is going to happen no matter what happens here. It is already happening in the marketplace.

By prohibiting these certain financial institutions, there are already a bunch of financial institutions that are doing it, you are just holding the level of competition at one level. By opening it up and making it an open playing field for everyone, you are just going to increase the competition because there are going to be different combinations of services that are brought to bear.

Chairman BACHUS. All right. Thank you.

Let me just before I go on, Mr. Smith, you have a thrift, do you not?

Mr. SMITH. No. I have a trust charter. I am a trust company.

Chairman BACHUS. Okay. All right.

Ms. Waters?

Ms. WATERS. Mr. Chairman—

Chairman BACHUS. Or Mr. Bentsen, whichever of you all want to—

Ms. WATERS. It is okay if Mr. Bentsen wants to go. I thought he was about ready to go. I have no problems with that. Go right ahead.

Mr. BENTSEN. I apologize for missing the earlier part of the hearing.

Mr. Smith, you talked about title insurance, but under Gramm-Leach-Bliley, national banks can offer title insurance through their operating subsidiary, I believe. So you have gotten that authority, and I think while there was a struggle over that particular issue, as I recall, it was determined that it was financial in nature.

But the two questions I have, for you and for the entire panel, are, one, I do not think that—you reference Cendant Corporation, for instance. I do not think that Cendant could own a bank. They can own a mortgage company, which is not a federally insured depository institution. And I am not sure that—I am concerned that if we want to go all the way and say that real estate is financial in nature under Gramm-Leach-Bliley, we might need to look at it from the other direction.

And I think that is something that you all need to think about, that real estate companies can now get into the banking business themselves, not just the mortgage business, not just the mortgage brokering business or the mortgage banking business, but in the banking business. I want to hear your thoughts on that.

The second question, and this is just sort of a broader question, because you referenced Cendant Corporation, which has had its ups and downs, I think, recently, is what is the rationale, beyond the legal issues which will be hashed out, but what is the rationale

for getting into this business if you were in fact allowed to do so? I mean, yes, the one-stop shopping and all that, but I mean is there really profit margin in that for the banking industry?

Mr. SMITH. Well, first, as to whether Cendant can own a bank, a broker, the people that own the real estate companies, can own banks. They can charter a bank and we are seeing many new charters today. So individuals that own the agencies can charter banks.

Mr. BENTSEN. But the corporation cannot.

Mr. SMITH. That is correct. That is correct.

Mr. BENTSEN. And they cannot use the capital from the corporation to capitalize the bank, because that would be mixing banking and commerce.

Mr. SMITH. Right.

Mr. BENTSEN. But on the other hand, to see it from your viewpoint, that it is not mixing banking and commerce for the bank to own a real estate company.

Mr. SMITH. Well, the bank would own the agency, and that is what I could today under my powers. I could own an agency, which under Gramm-Leach-Bliley or under the previous things we are allowed to own agencies. And so we have that precedent—

Mr. BENTSEN. Only pursuant to the regulation if in fact it becomes—I think that was what Mr. Barr, who is not here, but I think that was where he was going, that it is only pursuant to whether or not the regulation is final. It is not explicit in the act.

Mr. SMITH. As a trust company charter, I have agency powers, and I can own an insurance agency, I can own a real estate agency. So I have that ability to own that agency. And, again, that is not capital-intensive, that is not a safety and soundness issue. We will own the agency, and we have agents that will be selling insurance or agents that will be selling real estate. So we do not view that as a safety and soundness issue, because we are not pouring capital into that product.

Under Gramm-Leach-Bliley, it expressly prohibits us from getting into real estate development because that is capital-intensive and could possibly pose a safety and soundness issue. But that is our view is that an agency relationship would not pose a safety and soundness issue.

Mr. BENTSEN. And would you oppose a real estate agency, itself, with its own capital, seeking a rule to be able to own a trust charter or a national bank?

Mr. SMITH. Well, I think that is a determination by whether Treasury and Fed, which I think is what Gramm-Leach-Bliley was intended to do is to ask the Treasury and Fed to determine what things are financial in nature and those powers that can be afforded under that. So I think that is up to the Treasury and the Fed to determine how that is. We have explicit laws on the books on mixing commerce and banking, and I am sure that would have to be followed.

Mr. BENTSEN. But you would consider that mixing commerce and banking.

Mr. SMITH. Yes. A company cannot own a bank.

Mr. BENTSEN. Sure.

Mr. BAIRD. I think your example of the Cendant Corporation is an interesting example. First, let me just say that I am not—

Mr. BENTSEN. And if I might, the only reason I raise that is I did not think of it. To be honest, it was in Mr. Smith's testimony.

Mr. BAIRD. Right.

Mr. BENTSEN. I just picked it up.

Mr. BAIRD. And I am not an expert in the banking regulations, so I will start off with that part of it. But the Cendant Corporation essentially, from a market point of view, from my point of view as a competitor, owns a bank, because they have one of the largest mortgage companies in the country, and they own a real estate company, actually. They own my number one competitor. So they can offer the same services as if they were a bank and owning a real estate company. So by prohibiting banks getting into the business, you are essentially giving them a mini-monopoly on that connection, and I cannot go out, for example, and make a connection with a bank and—

Mr. BENTSEN. If I might, with the chairman's indulgence, there is a slight difference in that a mortgage company in and of itself is not a bank, and it does not have access to the Fed window, it does not have access to—it does not have what, say, Alan Greenspan likes to talk about, this implicit subsidy that we had long debates over, that I will not bring back.

And I do not think a mortgage company has access to the home loan bank system. I may be wrong about it, but I do not think it has access to own shares in the home loan bank system so that it can warehouse funding for mortgage purposes. It can sell to the secondary market like theoretically anybody can, but obviously you have to have capital. So I think that is an important distinction that has to be made. And my time is up. The chairman has been very generous, and I yield back.

Chairman BACHUS. The chair now turns to the ranking member, Ms. Waters, for her questions.

Ms. WATERS. Thank you very much, Mr. Chairman. Even though this hearing is being held, I think the issues are quite clear. I, for one, never supported Gramm-Leach-Bliley. I was concerned about these kinds of issues, concerned about the growing powers of the bank and the fact that ordinary citizens would be subjected to one-stop shopping where the banks would be in an unusually influential positions of offering all of the services and basically eliminate all competition because of the ability to do so.

But let me just ask Mr., is it Grabill?

Mr. GRABILL. Grabill.

Ms. WATERS. Grabill. Do you believe that if real estate is deemed incidental—do you understand that if real estate is deemed incidental or a financial activity, that it may become subject to regulation under the federal Treasury? How would you feel about that?

Mr. GRABILL. Well, I am a real estate practitioner and I am not a lawyer, so I really do not have an opinion on that particular point of law.

Ms. WATERS. Does anyone have an opinion on it? How would you like to have your activities become federally regulated? What happened if you sold real estate in the bank, in the federal bank, would that real estate agent be separate and apart from everything else that goes on federally or would that agent then come under some kind of federal regulation? How would it work?

Mr. GRABILL. Congressman Waters?

Ms. WATERS. Yes.

Mr. GRABILL. What I said earlier is what I believe that these two industries need to get together and find a common ground to respond to changes in the marketplace. I do not think I am qualified to advise you on how the federal regulations of the statute should read, but I do think I am qualified to represent my observations in the marketplace. Whether you change this legislation or not, there is a sea change in how real estate has being marketed, and there are consumers who are taking advantage of the ability to vertically integrate the industry just like they go get their gas and get a quart of milk.

They want to have their life simplified. The consumer is finding ways to do this. If you do not change this, it is not going to make a tremendous amount of difference in the average life of a consumer because they are going to find a way to do it anyway. Companies like Berkshire Hathaway, companies like Cendant, companies like Prudential, franchise organizations that can respond to the needs of a small businessperson who is a realtor in the marketplace will find ways to partner in the mortgage opportunities and the other ancillary services to help them be more profitable, to grow their real estate companies and to get the needs competitive to the consumer.

Just the big issue I have had with the realtor industry is that because we are so busy in our lives, we end up only talking to other real estate people. We do not realize these kind of pressures are on every other industry. The consumers get it. The consumers want the services, provide the need, and I can tell you from growing my business we did better as a company when we provided more services.

We are more competitive because the consumers want it. And a consumer may move from California to Ohio and have experienced it in California, and they want it in Ohio, or they move from Ohio to New Jersey and they want those abilities to do it because that is the society we live in.

I believe, and the reason I am here as a private citizen, is that the marketplace is making these changes, my trade association is not responding effectively to communicate the real changes that are going on. They are trying to build barriers and partitions to the marketplace. And I hope you find a way to get these two industries together.

Ms. WATERS. Well, let me just say this: I have not heard all of the testimony, but I have heard some testimony that suggests, for example, that Cendant is now this conglomerate that owns RE/MAX and Century 21 and Coldwell.

Does someone suggest that these real estate entities are now out selling properties and offering to get the mortgage and all of the other services related to that sale? Is someone suggesting that this is going on in some big way in America?

Mr. GRABILL. Congressman Waters, I sold my business to Cendant last year, a year ago today, and I can tell you they have been very successful and providing very good service, and I am a big fan of their format to do exactly that.

Ms. WATERS. Well, you know, I do not know if this is being maybe exaggerated a little bit, and I tell you why. I am a great observer of real estate and the real estate market, and I interact an awful lot with those entities that have been identified, the Coldwells and the RE/MAXs, et cetera. I am a lookie-Lou. I just go look at houses, and I just call real estate agents, and I know they hate me.

Mr. GRABILL. I knew you looked familiar.

Ms. WATERS. As a matter of fact, in one area of Los Angeles, one real estate person said, "Now, Ms. Waters, I think you know every house in this community. What else can we show you?" And I say that because—and the reason I am telling you about this just little personal experience is I have not met one real estate agent that has even suggested that they wanted to do anything more than sell me that house. Not one suggested that they wanted to finance it or even direct me to financing. They want you to come with your financing. Bring your banker with you to buy the house. That is what I have found.

Mr. GRABILL. I think that is very true, and that will vary geographically around the country. And agents, by and large, are independent contractors, and they will do what is in their interest and their client's interest. No matter what real estate broker owners or corporations want them to do, the agent will control that transaction. And I do not think your experience is unusual.

When we can get to 20 to 30 percent of our transactions through some of our ancillary companies, that is a very high number. I think the marketplace, that is the genius of the marketplace. I see this proposed legislation as adding additional restrictions, not solving the problem, and that is why I came.

Ms. WATERS. Well, I do not think it is intended to add additional restrictions. This is about the separation. This is about the wall. This is about saying, "We do this business and you do this business, and we want to keep it that way." And because even though you have described the marketplace a bit differently and people wanting the one-stop shop and it being inevitable and all of that, I do not really think so.

I think what people want are personalized services by real estate companies that are prepared to do what it takes to sell that property. I think they want people who are willing to meet them at a given location at 7 o'clock in the morning or 9 o'clock at night, because that is what I make them do—"Come meet me someplace, I want to see this house." And not only do they do it, but they educate you along the way.

The more I look at real estate the more I learn. I think I have learned everything, I keep learning more because that agent is there knowing his or her business. And what I like about this business it has opened up opportunities for a whole lot of people to be in business, for small folks to be in business, and I want to keep it that way. So I yield back the balance of my time.

Chairman BACHUS. Thank you.

Mr. Eastment, I will ask you—well, Mr. Baker, do you have a question?

Mr. BAKER. Mr. Chairman, if I might, I really had intended to be able to stay for the next panel, but we have a conference meet-

ing at 5 that I must attend. If I may, I would just like to make my statement now within the five minutes here.

Chairman BACHUS. Absolutely.

Mr. BAKER. Thank you, Mr. Chairman. And I want to express my appreciation to you for calling this hearing and bringing attention to this most difficult matter. Certainly, all of us who were engaged in the debate over Gramm-Leach-Bliley intended for the offering of financial services to be in a more efficient and convenient methodology for the public. And the question of whether real estate services and brokerages constitute financial services was at the heart of the debate.

As a former realtor and home builder, I certainly understand the concern about consolidation within the financial services world and the potential for enhanced competitive environment. No one will ever believe that the letter which I am about to read was sent to me unsolicited on July 15 but it was in fact. And I would like to read it into the record within the time I have available.

"Dear Congressman, as president of Latter & Blum Companies, I feel it is very important to personally communicate our feelings on the issue of banks entering the real estate business. We do not oppose their entry. We own and operate Latter & Blum and CJ Brown Realtors. Our organization is composed of 1,000 real estate agents and staff with 23 offices covering Louisiana and Mississippi. We are a Louisiana-based organization and proud to be recognized as the largest real estate company in the Gulf South by the National Association of Realtors, as well as independent media reporting services.

Latter & Blum is headquartered in New Orleans, and our CJ Brown operation is headquartered in Baton Rouge." That got my attention. I represent Baton Rouge. "We vehemently disagree with the National Association of Realtors' position on this matter. Is it highly unusual for our firm to oppose NAR's position on issues because as a general rule, we do support wholeheartedly their efforts. Our firm collectively is the largest contributor to LARPAC in the state. We cannot support or defend their position this time, however; it is dead wrong.

Competition is good and healthy. Our firm does not need anticompetitive protective measures from the government or the National Association of Realtors to keep us in business. Our organization was founded in 1916, and we have done quite well in the face of new and innovative competitors. Each new entrant over the years has brought us challenges, to be sure, but we have always prevailed and we will do so against banks. They provide no unfair advantage against our firm, in our opinion. We believe they may bring a different level of products and/or innovation that will force real estate companies to even further improve their delivery of services and products.

This is the natural evolution of business. Poorly managed real estate companies with poorly trained agents may not survive the new challenge, but that is in the best interest of the consumer. That is the American way. Quality real estate firms have nothing to fear. Bring on the banks. We may learn new things and do a better job for our existing and future customer client base. It is hypocritical, self-serving to prevent banks from entering the real estate broker-

age industry while allowing real estate companies to provide mortgage, brokerage and other ancillary services.

The issue of federally insured deposits creating unlevel playing fields in favor of the banks is a red herring and a diversion to the real issue. Let's speak the obvious. The public can certainly see it. We would most appreciate your consideration of allowing the market to work. Your energies and talents should be directed to the truly serious and potentially catastrophic insurance industry problems of our region—flooding—rather than becoming embroiled in this industry protectionist issue. Thanks for your help and many years of support, blah, blah, blah. Arthur Sterbco, President and CEO and Latter and Blum in Baton Rouge, Louisiana."

And I wish to speak just briefly to the issue of FDIC insurance. Whether or not it helps to resolve anything or not, I am not sure, but a bank pays a premium for insurance. If the premium is paid, it is a cost of business for the bank to operate—a premium which a realtor does not pay. Now, the beneficiary of the premium is not the bank or its officers, it is shareholders who are left holding the bag and depositors left holding the bag in the event the bank fails. So the bank sees no benefit from a mandated cost in order to do business.

I have really struggled with understanding how that is an advantage to a banker in competing with a realtor. And I certainly want to have further explanation made as to how that is a bottom line cost advantage to a banking enterprise in relation to the delivery of real estate product.

I do not have any offer to make, Mr. Chairman, as to how this issue is resolved. I simply say that a decade ago we were embroiled in a similar debate between insurance companies and banking and that is banks entered into the insurance business, insurance as we know it would evaporate and banks would own the world. History may have spoken a different story. I simply appear here today to put into the record the letter of one constituent who I think is brave enough to give us the facts. Thank you, Mr. Chairman.

Chairman BACHUS. Thank you.

Mr. Sherman, have you had questions yet?

Mr. SHERMAN. Believe it or not, I do have a few comments.

Chairman BACHUS. Okay.

Mr. SHERMAN. I have not had a chance to work with this panel. I want to invite our ranking member if she wants to tour more houses to come to the San Fernando Valley where our local realtors will show you interesting places. I know you are constrained and probably will not actually join me in living in the San Fernando Valley, but it will be a wonderful—

Ms. WATERS. If the gentleman will yield, I will just explain to you, despite what my friends may say, the real estate has become so expensive in California, now is not the time to buy. I am waiting. And I think that in about a year I may take up some of the persons I have been putting through all these hoops on one of those houses I have been looking at.

Mr. SHERMAN. The one thing everybody in the room will agree on is they are all hoping the real estate continues to go up. You may be able to unite the bankers and the realtors.

Mr. Chairman, these hearings are in a way premature and in a way absolutely necessary. We need to pass H.R. 3424 and lock in the fact that there is a very interesting policy issue, an issue well addressed by this panel and the next panel as well, but it is a policy issue that needs to be decided in this room by the people's elected representatives.

Once we pass this bill, once we tell the bureaucrats this is our decision, then we can explore some interesting questions, like whether deposit insurance gives banks an unfair ability to compete with realtors or not, whether there is a risk to the insurance fund knowing that bank lending decisions may have the appearance of being influenced by whether the bank's holding company is getting an extra 6 percent by acting as a realtor, whether bank regulatory authorities are capable of regulating realtors or whether realtors working for banks, real estate agents working for banks would be exempt from local state regulation.

In a few years, we will know whether Gramm-Leach-Bliley worked well, and after you digest one feast, and only then, should you be looking for another one.

And, finally, we would be able to explore in hearings, once we decide the decision is to be made by the elected representatives and the hearings should be here and not over at the Fed, this interesting chart, which is on everyone's desk and seems to indicate that 36 percent of the real estate firms of the whole real estate realty industry is dominated by three firms, which I believe confuses the fact that these are franchisees that are independent, locally owned companies making their own decisions, for the most part.

Whereas these 15 percent of banks—you know, last I checked with the bank manager of Bank of America down the street, he did not say, "This is my company. I do what I want. I just hang out a sign that has red, white and blue on it." The 15 percent bank figure is indeed owned by the banks. I have a feeling the 36 percent figure for concentration in real estate just indicates a bunch of local realtors preferred all have the same sign.

So we have to pass H.R. 3424 now and then revisit the policy issue, then we can bring this panel forward, then we can discuss all those interesting questions. If we do not do it that way, if we fail to pass this bill, then an important issue of public policy is going to turn on 12 bureaucrats can get into a room and stretch the word "financial" to encompass the commercial.

Well, that is not how we make policy decisions, whether bureaucrats can stretch a word. We should make them based on whether it is good for consumers and good for the country to have these find folks in the real estate business. And once we demonstrate that that decision is going to be made here, then we should have you folks back to convince us that we should make a decision different from the one I am leaning towards.

But worse than that, and that is if we sit back and let the bureaucrats stretch financial to encompass real estate, then maybe appliance sales, maybe automobile sales. I venture to say there is not a single person on this panel that can tell us whether banks should be involved in automobile sales. And if they can, I am sorry, that is outside the scope of the issue.

If we acquiesce in this, then we have, by default, told the bureaucrats at Treasury, at the Fed that it is their decision, not only for real estate, which you folks may be able to make a good case for, but for toasters as well.

Mr. Face, does your Virginia commission have the capacity to regulate realtors?

Chairman BACHUS. Mr. Sherman, your time is up.

Mr. SHERMAN. Oh, my time is up.

Chairman BACHUS. No, I am kidding. You can go ahead with your time.

[Laughter.]

Mr. FACE. No. My particular agency is a regulator of financial institutions. We do not regulate realtors. That is done by another agency in the Commonwealth of Virginia.

Mr. SHERMAN. Thank you.

Chairman BACHUS. You can go ahead if you all want to elaborate on the question. You can go ahead.

Mr. SHERMAN. You want me to ask—okay, I will ask Mr. Grabill—Patrick, how do I pronounce your last name?

Mr. GRABILL. Grabill.

Mr. SHERMAN. Grabill. You are a former director.

Mr. GRABILL. Yes.

Mr. SHERMAN. But as I understand it, they have 655 directors which means that they must have what, 5,000 former directors still on the planet?

Mr. GRABILL. Oh, there are many.

Mr. SHERMAN. Okay. So you are not here asserting that your role as a former NAR director makes you a—

Mr. GRABILL. Not at all.

Mr. SHERMAN. —representative of a huge percentage of the realtors in the country.

Mr. GRABILL. Absolutely not.

Mr. SHERMAN. Got you. Believe it or not, I have run out of questions.

Chairman BACHUS. Thank you. Yes, we will have a second round. Let me ask this question. I have reserved asking questions.

Mr. Eastment, you mentioned that you thought RESPA prevents you from tying the real estate transaction operating as one's broker from the financing from offering them a loan or something you basically said?

Mr. EASTMENT. Well, RESPA does a number of things. Number one, it prevents us from requiring the use of any other services.

Chairman BACHUS. Yes, tying of services.

Mr. EASTMENT. It also prevents us from offering compensation or any other thing of value to the real estate agents to encourage them to use the services.

Chairman BACHUS. And that policy is that there should not be any tie or any expectation that when you are someone's broker that you would then finance that purchase. Is that the policy behind that?

Mr. EASTMENT. I think the background of RESPA was to prevent, back in the 1970s, kickbacks for the referral of business. It is basically to prevent referrals.

Chairman BACHUS. Or even anti-competitiveness.

Mr. EASTMENT. Yes.

Chairman BACHUS. Let me ask you this: When you talk about one-stop shopping, doesn't that imply a tie, though?

Mr. EASTMENT. No, I do not believe that it does. I believe one-stop shopping makes the opportunity available. Ms. Waters' experience, for example, was her realtor did not choose to offer any other services, and as I said in my earlier testimony, after 20 years, we have a 16 percent capture rate.

Chairman BACHUS. Yes. That, I guess, is my point. Now, Mr. Baird and you both said that customers are the reason for banks to offer their services, as people are seeking one-stop service. But then on the other hand, you turn around and say only 15 percent of the people actually do this. And in certain locations, there are probably not but five brokerage firms. You are maybe one of five, so that does not sound like people are—at least the 15 percent does not imply that people really care about—

Mr. EASTMENT. Well, if you took the largest real estate companies in the country, probably more an average capture rate would be in the high 20's. Ours is on the low side. I believe that the consumer does want it. They do not want to have to come and buy the house from us, then go down the street and go to someone else for their title insurance.

Chairman BACHUS. Wait a minute. Yes. Okay. That is my second point. Now, they have to do that anyway, don't they? I mean I have been trying to sit here and figure out how you could buy a house and on that same occasion close on a mortgage. I just cannot conceive of that being possible.

Mr. EASTMENT. Well, the way it would work would be—

Chairman BACHUS. How is that one stop? I mean, you know, I cannot go buy a house and—I cannot go to Long & Foster, sit down and buy a house—

Mr. EASTMENT. You could come to Long & Foster, buy a house and under the same roof there would be a loan officer who would offer you a loan that you—

Chairman BACHUS. The same day that I close?

Mr. EASTMENT. The same day. In fact, we actually prefer to prequalify the person before they would go out and look at a house so that when they offer a contract to a buyer they would know that you were qualified. And then we can actually close the loan in the same office.

Chairman BACHUS. Now, isn't that tying it when you actually pre-qualify someone, you say, "We will give you a loan," you prequalify them, and then you go out and you sell them a house. I mean how could that not be tying it together? I cannot think of anything be more tied together.

Mr. EASTMENT. When you are buying a home, especially in an environment such as we have the last few years where the seller is interested in the qualifications of a buyer. And if they have two buyers coming to them, one who says, "Yes, I am interested in your house and I am writing a contract," and the other one says, "I am interested in your house and I am writing a contract, and here I am, I am already pre-approved for a loan of X dollars," that is a sure thing, and that would—

Chairman BACHUS. So, actually, what you are saying is that if you had at a bank that was a real estate broker and you were competing against someone that did not have a bank, did not have an affiliation, there would be a real competitive advantage because your client would come saying, "I am pre-qualified." Boy, now that is not what we call a level playing field, is it?

Mr. EASTMENT. I would think that it was. I think what we are offering is a service, and we are representing the seller of the home and we want to bring them qualified buyers. The—

Chairman BACHUS. But, you know, in a way it would—let's say you have a bank in a certain town and you also have a real estate firm and you start pre-qualifying people. It would almost get to the point that if I wanted to buy a house, I would almost have to go out and go to a bank and get pre-qualified to be able to go out and buy at a reasonable price, because I would be competing with all these people who walked in, because you said it was a tremendous advantage.

Mr. EASTMENT. It is a tremendous advantage when you have a seller who has to decide among, for example, multiple contracts. It is an advantage to them knowing someone is qualified rather than someone who writes a contract, they accept the contract and then the buyer has to go out and spend a few days getting approved. In the meantime, the seller has his home off the market. I think the other point—

Chairman BACHUS. If we said that we were not going to allow brokers to finance this transaction, then everyone would have the same advantage—

Mr. EASTMENT. I do not think we would be providing the service that the people would want then. They do not want to go around from place to place to get these different—

Chairman BACHUS. My time is expired. If we have a second round, I think—are any members wishing to ask a follow-up question on this side? How about on this side?

If they do not, let me close with one question. You are talking about one-stop shopping and I know, Mr. Baird and Mr. Eastment, you really focused on that. Convenience of dealing with the same person, pre-qualified. What about General Motors, do you think they ought to be able to own a bank and then they could basically own a bank and finance it all, when you could go to the bank and buy a car? What do you think about that?

Mr. EASTMENT. I believe General Motors already does that with GMAC and—

Chairman BACHUS. So is it you all's position that General Motors ought to be able to own a bank? What would your membership say?

Mr. EASTMENT. I do not think that would bother us.

Chairman BACHUS. Okay. How about your members?

Mr. BAIRD. One of my big competitors is owned by GMAC.

Chairman BACHUS. Yes. I am talking about a bank as opposed to opening finance company. You just think they ought to go ahead and do it.

Mr. BAIRD. I do not view that if General Motors owned a bank versus their current financial situation that it would make them any more or less competitive than they are right now.

Chairman BACHUS. Well, what do you think about them owning a bank? Does that bother you?

Mr. BAIRD. Whether General Motors owns a bank or not is not going to affect the real estate business or my competitiveness in the market.

Chairman BACHUS. And this is not a trick question, but that would certainly it would open another avenue to them, right?

Mr. BAIRD. Well, General Motors' ability to borrow money today is probably one of the lowest in the country, because of their financial resources. That is a huge competitive advantage that they have—over me or over a lot of other institutions.

Chairman BACHUS. Well, wouldn't that be a case of a large bank in a big town? Wouldn't they have a tremendous competitive advantage over a realtor with two agents?

Mr. BAIRD. I guess what I am trying to say—

Chairman BACHUS. You are and awfully big company, and yet General Motors, you are saying they have a tremendous advantage over you today.

Mr. BAIRD. No. They have a tremendous advantage in borrowing money. But as it comes down to the competitive nature in the real estate business, that does not have a significant difference for me.

Chairman BACHUS. Well, wouldn't a big bank—wouldn't the same thing be true of a big bank? Wouldn't they have a tremendous advantage on being able to loan money?

Mr. BAIRD. Well, they already are in my marketplace loaning money. The fact that they might offer real estate brokerage is not going to mean that their financial capabilities are any more competitive?

Chairman BACHUS. What about Wal-Mart? Do you all see anything wrong with allowing Wal-Mart to operate a bank? Your group does not?

Mr. BAIRD. You know, my own personal opinion is if Wal-Mart thinks they can compete with us, I will be glad to compete with them.

Chairman BACHUS. Because this would be consistent with your policy, right?

Mr. BAIRD. Absolutely.

And how about you, Mr. Eastment?

Mr. EASTMENT. I would say the same thing. Wal-Mart would not bother me. I think there is this—

Chairman BACHUS. And I am not questioning that. I believe you all sincerely think let Wal-Mart have banks, let them operate banks, because that is consistent with the competitiveness and the free market and the one stop, correct?

Mr. EASTMENT. Yes. I think there is a misunderstanding that large institutions, be they banks or General Motors or Cendant or whomever—

Chairman BACHUS. Or Wal-Mart.

Mr. EASTMENT. —or Wal-Mart, does something differently when they take someone out to show them a home. And as I said earlier, no matter what size company you are, unless you have a good agent who is looking after their customers' interest, they have to do the same thing to sell that customer something. And I think that is the key, customer service.

Ms. WATERS. Will the gentleman yield?

Chairman BACHUS. Yes. I will simply just close by saying I mean if you argue there is one stop and the competitor, then your philosophy has to say let the Wal-Mart in the banking business. It would be inconsistent not to, wouldn't it? I am just asking you two.

Mr. BAIRD. Could I add one thing to that? There have been many large financial institutions who have come into our business, and you can argue about how strong they are: Sears, Merrill Lynch, Prudential, Metropolitan Life. And quite a few of them have exited the business, because they had trouble providing the level of service that realtors provide.

Chairman BACHUS. And Wal-Mart could have that same problem.

Mr. BAIRD. A lot of people. I would love to be able to compete with large financial institutions, because I will beat them every day of the week, because they cannot provide the level of service that my realtors can, that I can attend to on a local basis. That is why the entrepreneur realtor is always going to win out.

Chairman BACHUS. So if we let the banks in the real estate business, we have got to let Wal-Mart in the banking business. So you all would agree with that?

Mr. Eastment?

Mr. EASTMENT. That would be fine with me.

Chairman BACHUS. Thank you.

Ms. Waters?

Ms. WATERS. You know, Mr. Eastment, when you talked about pre-qualification, it kind of struck a chord with me. I do not know if you know or believe that many of us feel that the banks have not done a good job in making mortgages available or loans available to people in certain communities. The reputation of banking in general is such that, you know, from the old description of red lining to the newer descriptions of predatory lending and all of that, I mean still kind of saddled with that reputation. When you talk about pre-qualification, if you use the same kind of thinking that banks have used in the past to determine whether someone is creditworthy, it causes me a little bit of concern.

What is different about the bank and the real estate agent is this: The real estate agent really wants to be financed. They want to make that sale, and they will help talk about possibly what you need to do in order to qualify, where perhaps there are several places you can go to seek that mortgage. Would you, as a banker, tell your customer that there is a bank across town that has lower interest rates than I have, maybe you ought to check them out first?

Mr. EASTMENT. Our agents do that all the time, and as I said earlier, the agents they want to keep you—

Ms. WATERS. They do what all the time?

Mr. EASTMENT. They have their buyers check multiple lenders before they commit. And, for example, if they were showing you a house, they might recommend two or three lenders, including ours, maybe not ours.

Ms. WATERS. Wait just a minute. I want to make sure that I understand you correctly. You would have someone representing your bank selling real estate suggest that there is another lender who will have better interest rates than you?

Mr. EASTMENT. If you understand how real estate agents work, if our company was owned by a bank and the bank said, "You only recommend us," the agent would leave and go across the street to our competitor. And I think that is why we are not afraid that banks could bring anything that would be much of a competition. If they did that, they would not be in the business very long.

Because the agents are independent, they are looking out for your interest, and they are going to do what they feel is right, because they want to keep you as a future customer. They do not want you to be mad at them because they recommended a loan that was inappropriate for them. And they want to stay in your good graces. And if they think an in-house mortgage company has an appropriate product, they will recommend us. If they do not, they will not.

Ms. WATERS. What is the advantage then of having that agent inside the bank? Aren't they there to bring business to the bank?

Mr. EASTMENT. Well, I think if we are talking about we have a loan officer in our real estate office. The advantage is the loan officer is right there and all we are asking for is the opportunity to present a loan package to you, and if you choose to go elsewhere, you are free to do so. As opposed to an outside loan officer from a bank across the street who you may have to page, he has to come by. We offer a mortgage office in our real estate office.

Ms. WATERS. Oh, that is interesting, and it is kind of hard to digest here, that an agent would be welcomed inside the bank for very long if they were sending the business all over town. I do not know. That just does not sound right to me. You know, I know a little about competition and business, and I just do not think that that agent would be welcome inside the bank if they were directing the sales at other places with better interest rates, et cetera. Now, I hear what you are saying and that sounds lofty and that sounds pretty good, but I do not know if they would have a chair there very long if they operated that way.

Mr. EASTMENT. If the agent was not welcome, if we take your premise they were not welcome, there are hundreds of other—for example, in this area, there are hundreds of other real estate firms that they could go to there and conduct the business the way they see fit. And what I do not agree with would be the premise that if a bank bought our company, all of a sudden they could direct the business to their bank. Our agents would leave in a heartbeat.

Ms. WATERS. Yield back.

Chairman BACHUS. Thank you.

Mr. Sherman, you indicated you had some—

Mr. SHERMAN. I would like to pick up on my colleague from California's comments. I am not so much concerned about a requirement but rather an incentive. As I understand real estate law now, and anyone on the panel can indicate this is wrong, if I am a real estate agent, I cannot accept from my favorite mortgage broker cash so that I direct all my folks to that one mortgage broker; is that correct?

Mr. EASTMENT. That is correct. Not only can they not accept cash, they cannot accept anything, quote, of value.

Mr. SHERMAN. Got you.

Mr. EASTMENT. And I think RESPA already covers that.

Mr. SHERMAN. We have dealt with the stock analyst problem. We have not solved it yet, but we have tried to do it with a little bit of a wall, and we have pressured, if not legislated, so that the big Wall Street houses will say, "We are not going to directly compensate you for recommending stocks of the companies we are doing underwritings for." And so I assume that RESPA would prohibit an employee of a bank from participating in a bonus program in which the more loans you get your customers to originate the greater your pay. Would RESPA prohibit that?

Mr. EASTMENT. RESPA would prohibit that. You know, the issue that you have—

Mr. SHERMAN. Now, my concern is this: I do not believe in Chinese walls to separate in the sense of expecting employees not to do what is in the best interest of their company, because if you are a real estate agent, you could not get compensated directly by your bank employer based on loan originations, but loan originations could be determined, calculated, kept track of. And then at the end of the year, you could get a bonus and it would not be tied to an exact calculation, but rather it would be an all facts and circumstances test.

And maybe because you are willing to work Sundays when other people will not or maybe because you have a good attitude or maybe because you have helped train some of the junior agents or maybe because your origination figure is good you could get the biggest bonus in the office. Are you proposing polygraph tests for supervisors of agents so that we know that the bonus at the end of the year, the discretionary bonus, the all facts and circumstances bonus is not influenced at all by loan originations?

Mr. EASTMENT. The situation on Wall Street involves employees on both sides. The real estate agents are literally and figuratively independent contractors and are prohibited by RESPA from receiving anything of value. It prohibits us from doing anything, and it would prohibit us regardless of who owned the company. So I would assume that if a bank owned our real estate company, they would still be subject to the RESPA provisions and would not be permitted to do that.

Mr. SHERMAN. Well, I know that the tax law has been designed to identify them as independent contractors and that benefits the industry. But are you saying that real estate salespeople do not get discretionary bonuses at the end of the year ever?

Mr. EASTMENT. I am not aware of—

Mr. SHERMAN. I know usually they get a piece of the 6 percent, but are there some firms where they also get bonuses?

Mr. EASTMENT. We certainly do not, and I am not aware of other firms that do that either.

Mr. SHERMAN. Because the question is not are you an employee or an independent contractor, the question is, is there an all facts and circumstances discretionary bonus payable at your firm at the end of the year that could be influenced by steering your customers to a particular mortgage source. And that could somehow interfere with the fiduciary duty to steer them to the best source.

I think, though, most customers, if they are dealing with Bank of America Real Estate are going to figure that they are going to be urged to get a Bank of America loan. As a matter of fact, panel-

ists have talked about one-stop shopping, and that is exactly what one-stop shopping is.

I would have to learn more and, as I say, I look forward to learning more after we pass the bill, take this decision back from the bureaucrats and decide this issue in a way that does not license the bureaucrats to deal with toasters, cars or anything else but just decide the real estate issue in this body. And I yield back.

Chairman BACHUS. Thank you. I very much appreciate your testimony and I know some of the questions we asked you were banking questions and you are real estate, in some cases, Mr. Eastment, Mr. Baird. We do appreciate your testimony, and you are discharged at this time.

At this time, we will call the third panel. Our third panel is made up of Mr. Martin Edwards, Jr., President of the National Association of Realtors; Mr. Robert Bailey, President of the California Association of Realtors; Ms. Mary Frances Burleson, President and CEO of Ebby Halliday Realtors in Dallas, Texas; and Ms. Elizabeth Holland, Asset Manager and General Counsel, Abbell Credit Corporation in Chicago, on behalf of the International Council of Shopping Centers; Mr. John Taylor, President and CEO, National Community Reinvestment Coalition.

At this time, I am going to recognize the gentleman from Texas, Mr. Bentsen.

Mr. BENTSEN. I thank the chair for yielding. I just wanted to make note that Mary Frances Burleson, who is the chair of the Texas Association of Realtors, is testifying before us today. I would also mention that Martin Edwards used to be a Texan, but somewhere down the line he went bad and ended up in Tennessee, I think it is, but still has strong ties there, and we are glad to have you both on the panel today.

Chairman BACHUS. I thank the gentleman.

Mr. Sherman?

Mr. SHERMAN. If I can recognize Robert Bailey who has the good sense not to live in Texas and instead to be president of the California Association of Realtors.

Chairman BACHUS. Thank you. And at this time, I am going to recognize Mr. Barr. He has a conference or committee to go to, and I am going to recognize him, with the indulgence of the other members, first.

Mr. BARR. Thank you, Mr. Chairman. I appreciate you letting me speak briefly out of order. I apologize to the panel. I have to leave and go to the floor on a bill, but I want to thank you, Mr. Chairman, for both panels, both the previous panel as well as this panel.

And I would like to pay a special word of welcome to Mr. Edwards. Mr. Edwards was a very, very eloquent spokesperson for the realtors just a few months ago, a couple of months ago, when he appeared before my Subcommittee on Commercial and Administrative Law to speak on the same issue. And I appreciated very much his input then, and I know that he will bring the same eloquence to bear with regard to the substance of the testimony today. But I would like to thank him and the rest of the panelists and apologize.

I do have to leave. I will try and get back after the floor debate that I have to participate in, but if I do not, rest assured that as

with the previous panel, I appreciate very much you all being here and will pay very close attention not only to the transcript of the proceedings today but your written statements as well. Thank you, and thank you again, Mr. Chairman.

Chairman BACHUS. Thank you. And also wish to ask questions, we will recognize you.

Mr. BARR. I will submit them in writing if there are any. I know that you will probably cover pretty much most of them, as you always do, hit the high points. But if there are any specific ones, Mr. Chairman, I will submit them in writing, but I do have to get over to the floor very quickly here.

Chairman BACHUS. Thank you.

Mr. BARR. And thank you for letting me speak out of order.

Chairman BACHUS. Mr. Bentsen, you have a question? Oh, I am sorry, they have not testified yet.

[Laughter.]

Yes, I have read their testimony, so I am ready just to ask questions.

Mr. Edwards, I apologize. I have been up till 1 o'clock and up at 7 this morning and it is beginning to show. It will turn on, actually. There is a button—

STATEMENT OF MARTIN EDWARDS, JR., PRESIDENT, NATIONAL ASSOCIATION OF REALTORS

Mr. EDWARDS. Push that button. That works, even for Texans, right?

Chairman Bachus, Representative Waters, members of the subcommittee, I am pleased today to testify on behalf of the National Association of Realtors, the National Association of Home Builders and the National Auctioneers Association, with a combined membership of approximately 1.25 million people, practitioners in our business supporting H.R. 3424.

Mr. Chairman, in these precarious times, housing and the real estate industry are a shining light in contrast to some of our country's largest corporate institutions who are now facing failure, bankruptcy and due to accounting problems and cozy relationships, in some cases, outright fraud.

Ordinary Americans have seen their retirement accounts wither and portfolios vanish with corporate management while corporate management has profited. Federal Chairman Greenspan testified last week that the continued strength of the housing and the real estate sector are necessary elements to keep the economy on the right track. We are proud as three organizations of this accomplishment and point to it as a strong evidence that the current system is not only working but is working very well.

It is important to note in our organization that 67 percent of all residential real estate firms consist of a sale force of five or less agents and only 3 percent of our firms represent a sales force of 50 agents or greater.

Many of the troubles being experienced in the current crop of corporate failures can be traced to rapid expansion and consolidation of business. Congress has determined that when the lines of separation are breached, as in accounting and in consulting, too many conflicts of interest may arise. We believe that that is why com-

merce and banking should remain separate. Real estate brokerage, leasing and property management are purely commercial activities.

Bankers will argue that the central tenet of Gramm-Leach-Bliley was the section to grant powers to banks. We disagree. The purpose was for Congress to grant securities and insurance industry powers to financial holding companies and national bank subsidiaries. Gramm-Leach-Bliley authorized the regulators to grant banks expanded financial powers, not whole industries.

Although bankers have argued that this is the first test of Gramm-Leach-Bliley, in fact there has been a rule finalized to allow financial holding companies to act as finders, bringing parties to a transaction together. It specifically excludes finder activities that require a real estate license.

Another proposed rule would allow financial holding companies greater entry into electronic data processing and new technologies to assist in delivering of existing bank products. These are what we believe Congress intended were incidental to our complementary powers.

The diagram here on my, if we have got it, on my right shows the current reality of competition in the financial services arena. Currently, we have a balanced marketplace of commerce, banking and financial services. Both the real estate brokerage and the financial holding companies, banks, have diversified their business lines into financial service areas that have served and serve as a buffer between commerce and banking, as we heard from the previous speakers. This was the intent of Congress throughout the deliberations of the Financial Modernization Act.

Let me make this perfectly clear, Mr. Chairman. Real estate companies do not offer banking services. We do not take deposits, we do not offer savings accounts, we do not offer checking accounts or certificates of deposits. We do not offer ATM machines. Nor do we have deposit insurance or access to the federal discount window. We do offer real estate brokerage, leasing and property management.

In addition, as you heard from some of your previous speakers, some real estate firms also offer mortgage lending operations. It is in this area where real estate brokers and banks compete. This is no different than General Motors financing the purchase of an automobile. In fact, close to 45 percent of mortgage originations today are from commercial banks. The next highest groups originates half that amount. And the realtor affiliated mortgage originations offer an origination of about 5 percent of the total market.

These are very special relationships governed by the affiliated business arrangement provisions of RESPA, Real Estate Settlement Procedures Act. That act requires very specific consumer disclosures and maintains an arm's length relationship between the affiliated providers.

So why do bankers seek this rule? Although they argue that the local licensing would of course be followed by the banks, actions sometimes speak louder than words. Maybe we can look to the experience of the insurance industry since the enactment of Gramm-Leach-Bliley. There have been several instances of national banks joined by their regulator, the controller of currency, seeking preemption of state consumer protection and insurance laws.

The state of Massachusetts recently filed suit against the OCC for preempting state laws on the sale of insurance by a bank. Even Chairman Oxley of this committee has questioned the OCC about the propriety of their actions. These are good reasons for Congress to take a long, hard look at how banks operating real estate brokerage firms would be governed.

Real estate today is one of the most locally regulated industries in America. There are far too many questions and hurdles that arise on the proposed rule to let them be decided by banking regulators rather than by local and state authorities. This rule would profoundly change the real estate industry. What bankers are seeking under the proposed rule is nothing short of nationalizing the real estate industry.

Does Congress want the Federal Reserve, the Treasury Department, the Federal Trade Commission or other regulators to be the regulators of the housing industry in land and local matters? If so, Congress should enact legislation to accomplish that goal. By declaring real estate brokerage, leasing and property manage financial or incidental thereto, the regulatory would do just that.

Yes, the bankers will argue that they only seek to enter the market to be competitive while abiding by all of the local real estate regulations. But their actions and insurance show a different approach that is sanctioned by the regulators at the federal level.

In closing, on behalf of these three large organizations, I would ask that you pass H.R. 3424 with its overwhelming cosponsor support. And I thank you, and I will stand for questions.

[The prepared statement of Martin Edwards Jr. can be found on page 128 in the appendix.]

Chairman BACHUS. Mr. Bailey?

STATEMENT OF ROBERT BAILEY, PRESIDENT, CALIFORNIA ASSOCIATION OF REALTORS

Mr. BAILEY. Chairman Bachus, Representative Waters and the members of the subcommittee, my name is Robert Bailey. I am president of the California Association of Realtors and the broker/owner of Bailey Properties Real Estate, a family owned and operated independent real estate company established in 1974. We are located in Santa Cruz, California.

Bailey Properties currently has three real estate offices and a property management and vacation rental office. The firm now includes over 102 associates, 17 support staff who serve clients throughout the entire Monterey Bay region. Our firm is the largest real estate firm in our market in both size and market share.

Thank you for inviting me today to present testimony on H.R. 3424, the Community Choice in Real Estate Act, on behalf of the California Association of Realtors. The California Association of Realtors consists of over 100,000 members. We are the largest trade association of any type in the state of California. We are the second largest real estate trade association in the country, second only to the National Association of Realtors.

Our members make up one-seventh of the entire membership of the National Association. To put that in scope, within California, CAR members handled over 90 percent of all residential real estate transactions last year, totaling in excess of 534,000 sales.

The California Association of Realtors is unique even for a trade association. We are an association where each and every member has an equal voice, where each and every member, if they can articulate their position well enough, has the ability, the power and the right to stand at the microphone and literally change the direction that we go within California and the way we go as an industry, whether you are a member from a rural part of the state or a large city, whether you are an individual practitioner or an associate with a major firm.

This is an important point when you gauge the response we have received from our members on the issue of banks entering the real estate industry.

The leaders of the California Association of Realtors first brought this issue to the attention of the members in January 2001. We received an immediate an overwhelming response, a response that far exceeded any that we had received before. There has never been an issue, whether legislative, risk management or bottom line driven, on which our members have never been so vocal. The closest we have come is the realtors current involvement in the housing affordability crisis that we are suffering throughout our state.

Over 40,000 members of the California Association of Realtors sent letters, e-mails and faxes to the members of the California delegation expressing their concern regarding the potential for banks entering the real estate industry through the ownership of firms that would broker, lease or manage property.

The size and passion of our members' response surprised us until we realized that they were not speaking solely as realtors but also as consumers. The shelf life of this issue within our state association has also surprised us. The passion at which our members continue to respond a year and a half later is exceedingly strong and has not diminished.

The input I have received, though, goes well beyond our industry. In my role as president of the California Association of Realtors, I spend time traveling the state meeting not just with our members but also with members of local chambers of commerce, rotary clubs, lion clubs, and next on my agenda next week is a group called SIR, which is the Seniors in Retirement. I will be speaking to 120 members of that organization, which they have explained to me will average in age of 80, and they have asked me specifically to put this as one of my talking point.

In each of these presentations, I have included a reference to the bank's request. The response I have received mirrors that of realtors. I think that goes to reinforcing my point that our members are not looking at this just as practitioners. They are not looking at it just as realtors. They are looking at it as consumers.

The public at large is only now beginning to become aware of the potential effects of banks owning and operating real estate companies. California is not unique among state trade associations. There is a broad-based support from agents and realtors across the country. Though I can only speak on behalf of California, I believe that this is an issue that affects not only realtors but consumers across our nation, and I hope that this is an indicator of not only our state but the sentiment of consumers and realtors across the nation.

And I would encourage the subcommittee to move forward on the bill. This concludes my remarks, and I would welcome any comments or questions. Thank you.

[The prepared statement of Robert Bailey can be found on page 81 in the appendix.]

Chairman BACHUS. Ms. Burleson?

STATEMENT OF MARY FRANCES BURLESON, PRESIDENT AND CEO, EBBY HALLIDAY REALTORS, DALLAS, TEXAS

Ms. BURLESON. Chairman Bachus, Representative Waters, members of the subcommittee, I am Mary Frances Burleson. I am president and CEO of Ebby Halliday REALTORS. We are based in Dallas, Texas. We cover nine counties, from the Red River to south of Dallas and Rockwall and Tarrant Counties. And we have more than 1,200 outstanding associates and 130 staff. We are the number one independent company in the state of Texas and number 10 independent company in the National Association, in the NAR, in the country.

I am also president of the Texas Association of Realtors, and we have 59,000 members. I am also a member of NAR. And I have been a director or NAR for 10 years. I am also a member of the Realty Alliance.

Now, in terms of our marketplace, we are very active. We provide a lot of benefits for our clients. We also have a mortgage company called Home Team Mortgage. We opened it five and a half years ago. Now, at that time, we joint ventured with GMAC to do our operations center, which does the underwriting and loan processing. We have our own loan officers.

Eighteen months ago, we decided to sever our relationship with GMAC, so we no longer have a joint venture; we own our own operations center. So we do our own loan underwriting and processing. First Tennessee is our warehouse loan, and after 30 days our loans are sold primarily to Wells Fargo.

So we are in business, in the mortgage business, and have been for five and a half years. So we want to be the masters of our own fate. We think we add better service to our clients and to our associates. We have loan officers in 20 of our 25 offices, and so we think we provide great service to our clients.

In talking about the membership in the NAR, I get a great deal of benefit. I attend meetings twice a year. I have been on all the committees and task forces. I go get information about the marketplace for risk reduction, risk management and about the marketplace and take it back home to our company to provide a better service for our company.

The Realty Alliance. As you have heard, there are 45 companies which are members of the Realty Alliance. The principals meet twice a year, our CFOs meet once a year, our marketing directors meet once a year. We meet together to share information, to learn to do things better and take the information back home to do better business. So we are there by choice, and we think it is a very good place to be. But we are members of both of these associations, and we get a lot of benefit from them.

Ebby Halliday Realtors. This is our 57th year of business—57 years. Ebby Halliday's still very active, the broker, and I have been

with the company for 44 years. I have seen every kind of market you can name—18 percent interest down to what it is today. We are very concerned about our marketplace. We do not mind competition, but we want the playing field to be level. We do not want it to be uneven. We think the banks getting our business would make the playing field very uneven.

Our company very much supports H.R. 3424, the Community Choice in Real Estate Act. We do not want the banks in our brokerage business. You have heard today that a lot of us think we can give great service and we do. Every one in the brokerage service has to give great service.

Chairman BACHUS. They are telling me that maybe move the mike back a little bit.

Ms. BURLESON. Back? Sorry.

Chairman BACHUS. They are recording it back there, and it is kind of—

Ms. BURLESON. Thank you. I have never been told I talk too loud. Thank you. But we believe that we can go toe to toe, but we do not think it is a level playing field where they get in the business.

So if they were get in the business, if they are allowed to get in the business, what will we do? We will do what we do now: Give great service, continue training our agents, work hard at everything we do.

I have a very favorite motto in my business life: Early to bed, early to rise. Work like H-E-L-L. Advertise, economize and Internet-ize.

Today's marketplace is very, very demanding, our agents are very demanding, and the public is very demanding. You have already heard the response from a lot of people sitting at this table today. So we have to continue what we are doing but to do it even better than we have ever done it before, advertising and marketing. That is why we go to national meetings. We keep learning, we keep asking questions.

Among our peers, what are their questions and concerns about the H.R. 3424? Am I doing it still? Sorry.

Chairman BACHUS. Actually, I think it is the mike. Let's switch mikes. I believe that is just the mike.

Ms. BURLESON. Switch mikes? Okay.

Chairman BACHUS. Turn that one off.

Ms. BURLESON. As the president of the TAR, Texas Association of Realtors, this year, I have to travel 16 regions. When I travel these 16 regions, realtors are very verbose, and they are very opinionated, as you have already heard Mr. Bailey. They are very emphatic. They say, "Go and do what you can to get H.R. 3424 passed." They want this to be passed. They do not want the banks in our business. So I am speaking on behalf of the Texas Association of Realtors and Ebby Halliday Realtors.

Thank you for your meeting today, Mr. Chairman, and thank you for being here, and I will wait for your questions.

Chairman BACHUS. Thank you.

Ms. Holland?

STATEMENT OF ELIZABETH HOLLAND, ASSET MANAGER AND GENERAL COUNSEL, ABBELL CREDIT CORPORATION, CHICAGO, IL, ON BEHALF OF THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

Ms. HOLLAND. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Elizabeth Holland, and I am the chief executive of Abbell Credit Corporation, a 50-year-old family business focused on real estate investment, development and management based in Chicago, Illinois. Abbell Credit manages a 1.6 million square foot portfolio comprised of a shopping center, an enclosed mall and office properties, including Merle Hay Mall in Des Moines, Iowa and Westgate Village Shopping Center in Toledo, Ohio.

I am here on behalf of the International Council of Shopping Centers and am the chair of the organization's Economic Issues Subcommittee. The ICSC is the global trade association of the shopping center industry and has 40,000 members in the United States, Canada and more than 77 other countries around the world.

Thank you for inviting me here today to express ICSC's views on the Community Choice in Real Estate Act and for holding another hearing on this very important issue.

The ICSC strongly supports H.R. 3424. In addition to the technical arguments that real estate brokerage and management activities do not constitute financial activities under the Gramm-Leach-Bliley Act discussed in detail in our written statement, we are very concerned about the potential negative effects that the proposed rules could have on many shopping center developers and managers.

For example, if a developer goes to a bank with a proposed project for construction or bridge financing, two scenarios could occur, both of which are highly problematic. In the first scenario, the developer agrees to contract with the bank to provide real estate brokerage and management services. The bank would receive a 5 percent management fee on the gross income of the project once it is operating, as well as a 3 percent brokerage commission on all leases. In this case, the bank's objectivity in reviewing the financial soundness of the project is now suspect, if not completely lost, because the bank will profit from the operations of the finished project.

In the second scenario, the developer does not plan on having the bank participate in the leasing and management of the finished project, which is currently what happens in the marketplace. In order to secure financing to build the project, the developer provides the loan officers with extremely detailed information, including demographic support, proposed tenants, design and configuration on the site, current competition, as well the weaknesses and potential pitfalls of the project.

The developer provides this information to give the bank comfort that the proposed project will be successful. This full and frank disclosure properly facilitates an objective credit analysis by the bank prior to issuing a loan. However, if a bank can compete for brokerage and management contracts, it could discuss a proposed project with a preferred developer, one that would allow the bank to pro-

vide it with such services should it get the opportunity to develop the project.

This potential scenario would most likely keep the original developer, and others like it, from fully disclosing the project's potentials and pitfalls and limit the bank's ability to accurately assess the risk of the project, to the detriment of its depositors.

Gramm-Leach-Bliley continues to prohibit banks and their subsidiaries from making real estate investments or being involved in real estate development. The Proposed Rule, on the other hand, would permit such institutions to engage in real estate management and brokerage activities. While these two rules may at first appear to be compatible, there are many overlapping or identical activities that are performed by property managers and real estate developers and investors.

Successful property management in the retail context involves many of the same functions as a real estate developer. A good management company must continually reevaluate the projects for further development and redevelopment in order to stay competitive within the market through renovations, tenant additions, expansions and property acquisition, as well as engage in municipal and governmental entity relations and negotiations.

The role of a property manager, like that of a developer, is to keep the project competitive by continuing to develop and redevelop the project over time. If a financial institution is allowed to engage in property management, it would have to fulfill these responsibilities and would, in essence, be engaged in real estate development, an activity that is prohibited under Gramm-Leach-Bliley.

Furthermore, a management firm's compensation is usually based on a percentage, typically 4 to 5 percent, of the gross receipts of a property. By taking a percentage of the gross revenue as the management company, a bank's fees will rise and fall based on the performance of the property. It will be invested in the performance of the real estate the same way as if it had an equity interest in the property. This interest would appear to constitute an investment in real estate, an activity that is clearly prohibited under Gramm-Leach-Bliley.

For these reasons, as well as those included in our written comments, the International Council of Shopping Centers strongly supports the H.R. 3424 and opposes the proposed rules. Thank you for opportunity to address you today. I would be happy to answer any questions.

[The prepared statement of Elizabeth Holland can be found on page 160 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Taylor?

STATEMENT OF JOHN TAYLOR, PRESIDENT AND CEO, NATIONAL COMMUNITY REINVESTMENT COALITION

Mr. TAYLOR. Good afternoon, Chairman Bachus and Representative Waters and distinguished members of the Subcommittee on Financial Institutions and Consumer Credit. My name is John Taylor, and I am the President and CEO of the National Community Reinvestment Coalition, NCRC. NCRC is a national trade association representing some 700 community organizations and local pub-

lic agencies who promote fair and equal access to credit, capital and banking services. NCRC member organizations represent over 18 million consumers nationwide.

I thank you for the opportunity, Mr. Chairman and other members of the panel, to be here to testify on the critical issue of whether we should allow banks to own real estate firms.

NCRC opposes allowing banks to enter the real estate industry. Under no circumstances should any further co-mingling of industries occur in the absence of updating CRA, the Community Reinvestment Act.

NCRC maintains that the addition of real estate to the array of products now offered by financial holding companies will lead to greater consolidation of bank market power and result in fewer choices for consumers. Our worst nightmare in a consolidated financial market that includes real estate brokerage is a bank offers favorable loan terms to its real estate affiliate, giving it significant advantage over a competing real estate business that does not have an affiliate. And the number of product choices offered to customers of non-affiliated real estate business decreases, resulting in higher-cost loans.

If we allow for the consolidation, Mr. Chairman, via cross-industry ownership of banks and real estate terms, we will end up with fewer and bigger firms, less competition, less choice and higher prices for consumers.

I must raise an issue that I think has been on the front page of every paper in the last month and that has to do with corporate greed. In May, when I testified before Senator Johnson's subcommittee, I cautioned against allowing banks into yet another market when we had just seen most of our country's largest lenders at the front of the, quote, Enron Ponzi scheme, end quote.

Now we have just learned that one of our largest financial holding companies may have conspired with Enron to make the company look financially healthier than it actually was at the same time that the holding company's securities and insurance arms were used to prop up Enron.

I hope in the end this is not true, but the point is Congress should keep the few remaining firewalls to protect the American consumer from financial institutions that are trying to serve too many masters.

When Congress repealed Glass-Steagall without instituting safeguards, it legitimized stealthy operations of financial conglomerates that are driven purely by greed and profits at the expense of the everyday consumer, investor and depositor. To borrow a phrase from my friend, Alan Greenspan—well, I call him my friend, I do not know if he calls me that—quote, "an infectious greed seemed to grip much of the business community."

I would add that that infectious greed in corporate financial conglomerates is what is driving this debate. And until we rebuild the firewalls demolished by Gramm-Leach-Bliley, it would be a tragedy to open the floodgates to get another market.

Unlike any other business, banks hold a special status: They are the stewards of the American public wealth. We taxpayers guarantee that consumers cannot lose their deposits in banks; however,

we depositors know that their personal savings are being put at risk when the infectious greed spreads to their financial institution.

When Congress enacted FDIC insurance, it held banks to a solemn promise that they would be manage safely and meet credit needs and deposits of all the communities in which they did business. There was a reason why Congress kept banks out of the other financial businesses for over 60 years. Congress thought that a head-long rush into other lines of business would risk people's life savings in imprudent schemes.

The terrible news of the last few weeks reaffirms that congressional wisdom of 60 years ago cautions us against allowing banks into yet another industry, namely real estate. Didn't the savings and loan industry devastate itself with bad real estate deals?

All this being said, I am somewhat confused as to the financial industry's argument that they need real estate brokerage included as a financial activity in order to stay in business. Banks today already enjoy a business relationship with real estate companies. You have heard some of the testify earlier. Long & Foster, for example, has a joint venture with Wells Fargo Mortgage Company. This venture offers loans through what is called Prosperity Mortgage.

Prosperity loan offices sit in the offices of Long & Foster. I am trying to imagine them recommending other lenders as you walk in. But you did hear Mr. Eastment testify that only 16 percent of his business came from that. He did not testify that it was the biggest growth area, a 33 percent growth factor, that that lender, that Prosperity Mortgage was in fact the single largest mortgage lender in Long & Foster. So the other 84 percent, was it, 84 percent was a series of other lenders, but the single largest one was in fact that very special relationship they have with Wells Fargo through Prosperity Mortgage.

In our opinion, there is more to this. We believe Wells Fargo wants to do what is now prohibited by law; namely to get their hands on Long & Foster client lists, to cross-sell their checking and savings products, credit cards, insurance, auto loans, refinance loans, annuities, estate planning, et cetera.

Greed has also driven Wells into the area. I mean a bank like Wells Fargo is now in the payday lending business. I am trying to imagine the relationships they have with Golatta National Bank and Ace Cash Express, things that really are done at the expense of consumers.

Can you imagine a business such as an FDIC-insured, a CRA-regulated, a federally overseen bank offering the antithesis of basic banking services, the most expensive kind of basic banking services you could possibly find, and that is payday lending. And now we want to open up the floodgate to allow them to get into the real estate industry. I think we need to learn from these experiences.

I would now briefly like to elaborate on how CRA must be updated to cover all the activities that financial institutions are now permitted to undertake. As you know, CRA only applies to depository subsidiaries of financial holding companies. Other parts of the holding companies have no obligation to serve the entire community in which they serve. It is a travesty to each underserved rural area and inner city neighborhood that CRA basically ends with checking products and lending activities.

When Congress passed Gramm-Leach-Bliley, it took the opportunity to give banks what they wanted, an end to Glass-Steagall, but it missed a tremendous opportunity to extend community reinvestment requirements to all bank affiliates, insurance companies and securities firms.

Chairman BACHUS. Mr. Taylor—

Mr. TAYLOR. Yes, sir.

Chairman BACHUS. —if you could wrap up. Maybe take another 30 seconds.

Mr. TAYLOR. I was just about to do that, Mr. Chairman.

Chairman BACHUS. Thank you.

Mr. TAYLOR. Thank you for helping me segue. I did, in closing, wanted to just point out what we have just learned from that segment of the real estate industry that has developed these special relationships where they do have mortgage companies. And I would just like to quickly have you and the rest of the committee take a peak at this chart that we have over there, which says, "Home Purchase Lending to Blacks and Hispanics."

And the dark color blue—I think it is blue—that is CRA-regulated banks, regular financial institutions. The red is those hybrid lending institutions that have developed these real estate relationships or have been dominated by real estate relationships. You can see the experience thus far in looking at how those institutions operate. From a consumer perspective, it does not hold great promise for blacks and Hispanics.

And the next chart, if it is up there, if blacks and Hispanics is not the issue for you but perhaps income is, you will see here too those hybrid financial institutions with those special relationships with real estate firms lagging well behind the rest of the industry. And this portends a shift on emphasis on what is important, we think.

So just as a calculation, we found that if the rest of the banking industry operated along the same lines that you have heard some of these firms mention here that have these hybrid relationships, there would have been 227,012 fewer loans to borrowers in the year 2000.

I will end by saying, Mr. Chairman, again I thank you for the opportunity to weigh in. Being a consumer representative, if I were not the last one speaking at the end of day, I would not think I was at a congressional panel. But let me say that we really urge you to get this bill out of this committee and get it on the floor. You have got 245 members behind this. Mr. Kanjorski tells us that there is probably another 100 waiting to sign on.

This is the firewall that did not get created when you passed Gramm-Leach-Bliley. I do not want to sit here and say, "I told you so," whether we are talking about Enron or all the promises of like, "Let's follow the industry, this is where the insurance and banks want to go. We need to do this because this is where the industry is going." And you heard that in the earlier testimony, this is where the industry is going. Well, pass Gramm-Leach-Bliley with the industry and all the insurance companies and the banking business. It did not happen.

So I am not going to say, "I told you so," Mr. Chairman, but I am going to plead with you to create this firewall, the first firewall,

that really needs to say, "This is not what was intended when you passed GLB and enough, members of Congress," and we were all there for those conversations, and specifically this was the thing that was constantly recognized as this was not the intention in passing GLB. Thank you, Mr. Chairman.

[The prepared statement of John Taylor can be found on page 197 in the appendix.]

Chairman BACHUS. Thank you. Mr. Taylor, I noticed that you had run for Congress.

Mr. TAYLOR. I did. I do not know how you guys can do it.

Chairman BACHUS. I think you are well qualified.

[Laughter.]

Mr. TAYLOR. I am not a good enough fund-raiser is what I basically learned from that experience.

Chairman BACHUS. You can go back to Massachusetts and tell them that when Greenspan testified before the committee, the stock market dropped 200 points. While you were testifying, it went up 440 points.

Mr. TAYLOR. As a matter of fact, I have a meeting—is that true, it just went up that?

Chairman BACHUS. Yes, just while you were talking. No, I mean—

[Laughter.]

It did go up.

Mr. TAYLOR. Well, I want that in the record, sir. But I also want in the record it is Massachusetts, and all you Texans, Massachusetts, go home and practice that word. It is an important state. But I like the accent otherwise. Sorry, sir.

Chairman BACHUS. Thank you. No, you are fine.

At this time, Mr. Bentsen?

Mr. BENTSEN. Thank you, Mr. Chairman.

Two questions for Ms. Burleson and Mr. Edwards and Mr. Bailey. And I told my colleague from California after he made that remark about Texas that that was all right because we would get him back on the gas prices down the road. But the Fed came out with this rule in December of 2000, if I recall correctly. Treasury has subsequently come out with a—postponed until I think early next year a final rule. So the way it is structured under Gramm-Leach-Bliley you have to have both parties come up with a joint rule.

Have your organizations or you all individually had any discussions with the administration on their views on this subject? Do you have any indication of where Secretary O'Neill or the Bush administration is going on this, other than just their delay?

Mr. EDWARDS. I guess I will try to answer that, Mr. Bentsen, by saying at the beginning of last—at the end of 2001, we had an indication, a strong indication from the secretary that he would promulgate the rule when Congress recessed. And that is why the legislation was introduced.

It was coincidental, I think, that when we reached 218 cosponsors on the bill that morning Mr. O'Neill postponed the ruling until the end of the year. And so I do not have any other reading other than I have been told keep going and get the legislation passed, as

Mr. O'Neill told me personally, "I would like to see congressional intent."

And so I thought, and as someone who has been around a little bit of legislation, that when we reached the congressional intent of at least 218 members of this body that that was a pretty good message. And so the message was that we would postpone any further activity on it until the end of the year. I take that as he is waiting for this body and the Senate to pass the legislation. That is the only way I can answer it.

Ms. BURLESON. No. I have not had any conversation at all with the administration about it.

Mr. BENTSEN. Mr. Taylor, I am going to stray off the path here a little bit, but since you raised the subject of CRA and since we are talking about Gramm-Leach-Bliley, I recall that you and I sat on a panel together shortly after it was adopted back in, I guess that was, 1999. And I know you raised significant concerns about the CRA provisions within the bill.

Over the two or three years that the law has been enacted and the rules have been promulgated with respect to CRA, has your analysis indicated a decline in CRA activity by covered institutions? Has it been flat? Have your worse fears been confirmed? What have you found?

Mr. TAYLOR. Yes. Unquestionably, we have found what we feared the most. There is a real malaise, I think, in the attitude of lenders as it relates to CRA in a way that we have not seen in a long time, in a long time. And it predates the change in the White House. It really, I think, is very much connected to the sense that there is not—you need not be concerned and that banks, for the most part, have sort of figured out how to get by.

And so what you are seeing is a lot of satisfactory ratings from the examiners. You are seeing not as many outstanding, and you are seeing a great inflation which starting in 1992 when 11 percent of all financial institutions received a failed rating, dropped down now to 2 percent or less, depending on the agency that is regulated.

But more importantly, just from all of our members and the experiences they are having in discussions with banks in making investments in underserved neighborhoods and working class people, they are all reporting back to us that there is a new attitude. And, you know, there are exceptions to that, sir, but for the most part I would say that that is the sad picture that is developing.

Mr. BENTSEN. Thank you, Mr. Chairman.

Chairman BACHUS. In approaching this hearing, we had several rumors that we were not going to allow certain people to testify, certain interest groups, and that we were going to knock people off the panel and they have been invited and uninvited. And so as we were just doing this hearing a few minutes ago I wanted to make sure that did not happen and I wrote a note to the staff which said that, "Did we knock anybody off the panel?" And the note I got back was, "No, but we still can."

[Laughter.]

I am not sure which one we want to knock off.

Mr. SHERMAN. Mr. Chairman, when you say the panel, do you mean the panel down there or the panel up here?

Chairman BACHUS. I do not know if it was the first panel or the second panel. But both panels, no one was knocked off. We do not do it at this late time.

I have a letter that I want to introduce for the record, and I will do so at this point. It is from the Association of Real Estate Licensed Law Officials. And it simply says about the proposed rule, I will just quote two or three sentences: "Failure to require bank real estate sales to be subject to state and real estate license laws opens the possibility for a rollback of strong consumer protection laws currently in place. And then they ask the question and they say that there are presently no federal legislation or regulatory bodies designed to protect the consumer from an unlicensed, federally sanctions real estate sales.

And in fact the current situation with the insurance industry claiming federal preemption over state consumer protection laws causes us a great concern over the future of real estate commissions to protect the public interest. It is therefore this association's position that any regulation must require all entities selling real estate in the state to be subject to the jurisdiction of state laws and regulations pertaining to real estate. Federal preemption could clearly lead to a rollback of protections afforded to consumers in this, the biggest transaction of most people's lives."

And I would like to associate myself with those remarks. We have found that preemption could in fact have some dangerous consequences.

[The following information can be found on page 220 in the appendix.]

Mr. Sherman?

Mr. SHERMAN. Well, it is a shame that this hearing has been so brief. I look forward to tomorrow's session. You all will be back here.

Ms. Holland, you bring up some interesting points. A lot of people have a lot of takes on the thrift crisis of the 1980s. My take on it was that you had a chance to get federal insurance, on the one hand, and experience the risks, the joys, the expectations of enormous profits—did I mention risks—of real estate development.

And as you point out, in the shopping center business, which you clearly understand very well, many of the risks and joys of ownership and development seem to be experienced by the realtor/manager. A 5 percent share of all the revenue, that is better than being a 5 percent owner, which after all is just a 5 percent interest in the remaining 95 percent.

And what concerns me is that banks we count on them to do something that is very awful and that is turn people down. That is a role they play. They play it all too well, some of my friends. They play it with individual home buyers. They play it with—I mean I am sure most of the members you represent have all been turned down. And, thank God, or there would be a shopping center everywhere.

[Laughter.]

It is easier to turn people down. They come in, they want a loan, and maybe they are willing to pay—I mean you measure what they are willing to pay over what somebody else is willing to pay for that money in basis points. I mean most people out there in the

real world did not know you could measure percentages in percentages.

And so to be talking about not—because the profit margin is not, say you make an 8 percent loan, 8 percent. Well, it is a 8 percent loan or cost of funds is 7 percent. That is a 1 percent payoff for the bank. You are talking about real estate commissions that are 5 and continue on after that, and I wonder whether—now, if you were doing this deal with a private mortgage banker and that mortgage banker let you build a lot of bad unsuccessful shopping centers and your member went broke and the mortgage banker went broke, I would be very sad, but the Treasury would not lose a penny.

On the other hand, regardless of the legal niceties we discovered in the 1980s that when the insurance fund is hit it is a hit to all taxpayers and all consumers, I just wonder whether making loans under those circumstances could be regarded as a low risk, low upside risk, low downside risk business?

Ms. HOLLAND. Making loans in the context—

Mr. SHERMAN. Making loans knowing that you are going to get the realty contract, you are going to be—I mean you described two situations where you were involved in renting the individual stores, and I think you ascribed it at a 5 percent revenue share. And then a second activity that you also described involved in management. Perhaps you could clarify that as well.

Ms. HOLLAND. Sure.

Mr. SHERMAN. But you described two pieces which seemed not to be measured in basis points but rather mentioned in full percentages.

Ms. HOLLAND. Exactly. There is no question that if a bank is presented with a proposal from a developer to do a construction loan, so all we have is dirt, we have nothing to mortgage yet, and they are looking at a project and they know that from this developer not only are they going to get to lend money to him at a higher than mortgage rate because it is a riskier proposition, there is nothing to mortgage yet, but they are also going to receive at the end of the day, once the project is refinanced with a mortgage, once it is completed and it is leased, then the mortgage lender comes in and assumes the mortgage and buys out the construction financier that that same bank that issued that construction finance, that took that initial risk is going to receive 5 percent of the gross revenue as a management fee and 3 percent of the leasing income as a leasing fee, as a broker that—

Mr. SHERMAN. Okay. So banks today they make the construction loan, that is at a higher than average interest rate.

Ms. HOLLAND. No question.

Mr. SHERMAN. Then they aspire to make the permanent loan, in effect, to take themselves out of the first loan or—

Ms. HOLLAND. Some do, generally, though, in a bigger project representative it would be either a life insurance company or the collateralized, mortgage-backed security market that would create the mortgage.

Mr. SHERMAN. So there is a first loan, there is going to be a second loan the bank may or may not be interested, and then you

mention a 3 percent and a 5 percent fee. Can you describe which of those two—

Ms. HOLLAND. Sure. How we see the proposed rules affecting our business is that once a bank can participate in both the brokerage, meaning leasing to the stores, as well as the management of the property, they are going to receive fees for that work. And, generally, in the industry, they will receive a 5 percent management fee on the gross revenue of the shopping center, as a well as a 3 percent brokerage fee on the leases that they sign with stores.

Mr. SHERMAN. So there is a 5 percent fee in your business for the person that hires the janitor and makes sure that the place is clean, another 3 percent fee that shows the space to Judy's Dresses and tries to say, "Hey, you ought to lease this spot here and do not worry about that Macy's competition.

Okay. That would be, in banker's terms, 800 basis points. Okay. Go ahead.

Ms. HOLLAND. And so, obviously, the credit analysis that a bank would engage in, if they were not going to participate in the process of the final projects, it is much more circumspect. It is a much more jaundiced eye. It is questioning, well, you know, there is a shopping center across the street that has a lot of the same tenets that you are talking about putting in here. Why is yours going to succeed and not theirs?

But when the bank knows that we are going to get 800 basis points at the end of the day on the final project, and we are going to get it as long as this project continues to do business with us, because Leases have come up for renewal, tenants move, they go out of business. Obviously, that analysis probably goes to nil, I would imagine.

Mr. SHERMAN. My greatest fear before today was that a federally insured deposit institution would make a home loan to my former brother-in-law. My greatest fear now is that they are going to make a shopping center development loan, which poses a much greater risk to the insurance fund.

I have run out of questions, but clearly we want—where we take as taxpayers the risk, we want banks to be saying yes or no without another side to the same company, always pushing for a yes, a side that could be far more lucrative just as we saw the stock brokerage firms. The stock brokerage does not make any money, what makes money is the underwriting and the consulting. We might be in a circumstance where lending money to shopping centers is just the loss leader with the emphasis on lost and the expected profits and in the management fees and the leasing fees. And thank you.

Chairman BACHUS. Mr. Gutierrez?

Mr. GUTIERREZ. Thank you much, Mr. Chairman. Appreciate it. I want to first say that I am happy you called a hearing. Thank you very much. Look forward to having a full committee hearing on this legislation, which I have cosponsored.

Chairman BACHUS. You were not here but this hearing actually was not my idea. It was Chairman Oxley's.

Mr. GUTIERREZ. Well, I want to thank Chairman Oxley, for the record then.

I guess, you know, one of the things that we can bring to Congress, which I hear many members bring to Congress, is their own personal experiences. And it seems to me that if there is a somebody that understands the community, and it needs to understand that community in order to thrive in that community as a real estate broker, a real estate agent.

And they bring with them a plethora of insurance and other products in order to make that fail, much like when you buy a car they might have insurance there, they might have a repair, they might have a warranty, they might do a number of things.

And so it has been my experience that they understand communities. Are there bad real estate agents? Sure. There are bad bankers, there are a lot of bad people in a lot of different areas of our great society. But for the most part, I think they are an integral part of a community, and they understand what goes on in that community. And I am very, very concerned about just what happens when we continue to dilute the Community Reinvestment Act.

And so I just have one follow-up question that I came down here to ask Mr. Taylor. I was listening to your testimony. Fortunately, this hearing is being televised so I could stay in my office and watch everybody's testimony and I read your testimony. But you said something when I got here that—you said that financial institutions, to paraphrase, feel less and less warm and anxious and having to be responsive to CRA.

And you also spoke when you were talking in your testimony about Wells Fargo and their relationship with Long & Foster, I believe it was. Given what you know about financial institutions and their current relationship and financial institutions and their prospective relationship with real estate, what do you think the impact would be on CRA and investment in low-and moderate-income communities?

Mr. TAYLOR. Right. Let me start by, again, reiterating this chart in which we were able to look at the sort of snapshot of those real estate firms that are in, essentially, through these hybrid relationships, these special ventures they have created through working with mortgage companies, what the record has been thus far compared to mainstream financial institutions. And it is not good as it relates to working class people, and it is not good as it relates to minorities or people of color.

You know, the chairman mentioned that I ran for Congress. That is how I spent the beginning of my summer vacation. I ran for Congress in Moakley's seat, who is a great man, and I learned a lot through that, and I have a newfound respect for all of you. Sad that you have to spend so much of your time in fund-raising and that you have to run every couple of years. It just seems like you have to—it is just one continuous campaign with apparently some legislation in between.

But I am saying this because I think the regulators in the White House, in the executive offices really take their cues as it relates to CRA from your folks, how important or how unimportant it is to you. I felt we took it on the chin with Gramm-Leach-Bliley. We allowed the insurance industry without having any safeguards or even having them report to see to it that they fairly allowed policies to go to communities of color and to working class Americans,

just a report so that we can get an idea of how those policies are going out.

We have had a stiffening, in my opinion, in the regulatory agencies that cries out for this Congress to be vocal again about the importance for fair credit and for access to credit and capital and for treating all Americans fairly and allowing them to participate in the capitalist system. It is not coming from anyplace else but from here and from community leaders.

And as I sit here in the audience and I listened, I mean I listened to the panels and we finally get a, one community representative. I do not know if I was on that list to be scratched but thank you for not scratching me. But, you know, when I ran for Congress, I talked to a lot of people, and they have a lot of faith in you folks and a lot of faith that you are here representing their interests and what you really care about is what is important to American consumers. And I sit here and what I hear is an industry, two major industries like dueling packs.

You know, I am sitting there beside the head of the ABA and the head of the NAR and these massive packs that have massive influence, and I am listening to their representatives on either side fight this battle, and all of them talk about consumers, when all it is about is about getting wealthier and finding ways.

I mean interestingly enough, it seemed like the real estate people who really wanted to do this were the well-healed real estate people who were perhaps ready for an acquisition by a financial institution. I do not know, but it was all about money and making more money and not about what was in the interest of the consumers, and they really rely upon you as the people who are going to look for that.

Because it was not at this table, with all due respect to the people in the industry, and I think you have done well representing the industry, we need more people speaking for consumers here so that you are in fact hearing how this relates to what is most important, and that is ultimately what is the impact on the consumer?

I am sorry I am the sole rep, I am sorry I do not have the skills and talent to absolutely convince everybody here that we should go out and pass this bill tomorrow. But you asked me a question and I am really answering it because what I am saying is that I think CRA, there is a bill in Congress now, and several members of this committee have signed on to it—35 members of Congress—to expand CRA to the affiliates and subsidiaries of financial institutions.

If the real estate community got into this business, by the way, as an affiliate, they would not be reported under CRA. They would not have any obligation. As a subsidiary, the bank would get to choose whether to count the actions and performance of the real estate firm for CRA purposes. So if it works in their favor, "Yes, well, we will count—this is what our real estate firm did, for CRA purposes. I mean it is like allowing someone to sort of effect their grade.

And so, Mr. Gutierrez, I apologize for the long answer, but there is a bill in Congress that would make a great, great difference and create the kind of level playing that really consumers desperately need, that would bring private mortgage companies into this arena

of making sure that they are not discriminating and ignoring LMI, low-moderate-income areas.

It would allow us for the first time to get a really good view on small business lending and what is happening with financial institutions as it relates to what small businesses are, who they are making their loans available to by income, by census check, by gender, by race, for the first time.

And the only thing prohibiting this at this point and the only one standing between that being a reality is my friend, Alan Greenspan, Regulation B. And he has told me personally if you guys would do it, he would go along with it. But he believes that is the job of Congress. So I do not know if he has passed that message along to you but allow me to be the messenger for my good friend, Alan Greenspan.

Mr. GUTIERREZ. Let me just, because the time is up and I know that the chairman has been very gracious in extending the time and I am happy he has, let me just say that the bill was introduced by Mr. Barrett of Wisconsin and it has 35 cosponsors of the bill, so now people know at least we are not in collusion with one another and asking each other's questions, because it is clear you did not know who was introducing the bill. But we are working on the bill because CRA is important to us.

And while I support the real estate industry in this matter, I wanted to come down not to ask the real estate industry because I know they are very well represented because they get to come by my office and I greet them warmly and attentively every time they come and meet with me, including my own real estate broker back in the city of Chicago who does a great job. But I wanted you to have an opportunity that I know is not always afforded the proponents of CRA. I want to thank you for your work and say that we are going to continue to do the work.

And just one last question. Is there something that the public that might be watching or that members of Congress that might be interested, is there a bible on CRA that I could go and say,"Oh, I want to look at Chicago and I want to look at Boston, Massachusetts or I want to look at L.A."—just I had an argument with my wonderful staff person, and I told her you were from Massachusetts, but now she believes me—that we could look at and kind of look at what their performance on CRA is?

Mr. TAYLOR. Yes. First off, I do want to point out that I am extremely aware and appreciative of your having sponsored that bill and at least from what my staff tells me they actually provided input. They really did not do that, but in any event, yes, there is. We regularly analyze the top lenders in America and we try to look at it over a good period, anywhere from three to four years. And in fact we have done that every three to four years, and we can tell you which lenders are doing what by race, by income in all the major cities, major markets in America, and we would be glad to supply that information to you.

Mr. GUTIERREZ. Thank you.

Mr. TAYLOR. You are welcome.

(AFTER 6PM)

Mr. GUTIERREZ. Thank you, Mr. Chairman, even though you did not want the hearing. Thank you very much even more.

Chairman BACHUS. Thank you. And, actually, I will say that the majority invited three witnesses and the minority invited two witnesses. Mr. Taylor, you are one of our witnesses.

Mr. TAYLOR. Cool. Thank you.

Chairman BACHUS. And when I was talking about knocking someone off the panel, we were trying to just keep five or six on a panel. We were not talking about any one certain person. I really actually said that for the benefit of one person in the audience who was afraid I was going to knock one of their witnesses off, but I did not. It was not on this panel either.

Mr. TAYLOR. Mr. Chairman, I was looking for the opportunity to actually agree with Mr. Barr, because I have not had that experience in that past.

Chairman BACHUS. No, and you will not again.

[Laughter.]

Mr. TAYLOR. I am afraid that might be true.

Chairman BACHUS. Let me ask a few quick questions, then we will adjourn. I know some of you probably have travel arrangements. One of the strong arguments for allowing banks into real estate, and I mean one that I think has some logic to it, is that you have these, I guess you call them, integrated financial services companies, like Long & Foster—is that the name—Coldwell Banker, Long & Foster, and they are doing all these services.

I mean they are doing pretty much what they describe, one-stop shopping where they do the title insurance, they do the mortgage financing, real estate brokerage services all in one shop. And if they can do that, why not let the banks in it? I mean aren't they basically doing the same thing a bank would do?

Mr. Edwards?

Mr. EDWARDS. Mr. Chairman, I in my past years owned a mortgage company, and I will admit to you that I started off as a commercial banker and have been involved in two bank boards. I think I understand the difference between the two and just to say to you, yes, some of these integrated firms like Prosperity Mortgage are offering mortgage services. However, they are under, as Mr. Eastment talked about, they are under RESPA rules which requires full disclosure.

And I will add to that when I had a mortgage company and I borrowed money from a bank, loaned that money, whether it be Wells Fargo or First Tennessee Bank of Memphis, when I made a loan, as Mr. Chairman was talking about, I was responsible and they are responsible for those funds. I did not make those loans with insured deposits.

And so they are at risk when they do that, and I was at risk, and if it did not work out, I made a 30-year loan with a 30-day warehouse loan, and there is a certain amount of risk involved in that that the federal government or the taxpayers were not at. So that form of business is an approved business model today that, as we pointed out, is working.

But I am not in my business today—if they were in the banking business as a commercial broker, our business requires a lot of borrowing capital. And so what you would place us involved in is we would be now very similar to our folks at the shopping center, my

firm would be borrowing money from my competitor. And I am sorry, that is not a level playing field that I am accustomed to.

Now, if you in fact want to hand over, and I do not think you should, and insure it, hand over a federal bank charter to our commercial real estate firm where we are on the same capital level with First Tennessee Bank, then that is something else.

But to answer your question directly, I think there is a great deal of difference between us being responsible for that capital and how it is paid back and the taxpayers.

Chairman BACHUS. Let me ask Ms. Holland, one thing that obviously—the scenario you outlined is really disturbing, but do you have to share all that information with the bank to get financing? Do you have to tell them about who you have lined up to go in the shopping center or who you are negotiating with or who you have a—do you have to do all that?

Ms. HOLLAND. Yes. Actually, at the construction finance stage, where the project is a one-dimensional photo with colored trees and beautiful bushes and well-dressed people walking by into the stores, you most definitely have to tell the bank who your tenants are going to be, what your expected rents are going to be, what the demographics are in the area where you are planning on building the shopping center, why those demographics support the project.

Because the bank at that stage currently, under current law, where they are not our competitors, knows that unless there is a life insurance company or the capital markets in the form of a CMBS that is going to take them out on opening day with all of their fees and attendant higher levels of interest than a standard mortgage, they are not interested in building your shopping center for you.

Chairman BACHUS. So you in fact would be sharing your information with someone who would be in competition and that information would be valuable to them.

Ms. HOLLAND. Most certainly, particularly under the scenario where I am a self-developer, self-manager, self-lessor, and if I have to go to the bank to say that this is going to be my project, and the bank says, "Well, gosh, we could work with Liz or we could work with Larry and Larry is going to give us the brokerage and the management. Let's tell Larry about Liz's great project."

I will say this: Chairman Oxley asked that we have this hearing, and as I stated at the start of the hearing, this was not my idea of a reasonable time to have the hearing. I will say that I stand corrected in that I think this has been a very good hearing. I think that there have been issues raised on both sides that had not perhaps been thought out. And I will leave this hearing with some new concerns that I did not have going in with this proposal.

Maybe any of the members that attended any part of this hearing or read the transcript of this hearing and I would think the regulatory body that proposed this rule that this will be reason for some further question and deliberation on their part. So I think the hearing has in fact confirmed the wisdom of the chairman of the full committee's desire to have a hearing at this time.

I appreciate your attendance at the hearing. I do have other questions but the lateness of the hour I am going to submit them, not only to this body. The one thing we did not go into, did not get

into this hearing is who would regulate this process. Would these individuals be—I mean there is not a federal regulator. Who would they be regulated by? And that question has not been asked.

Mr. SHERMAN. Mr. Chairman, if I can just commend you for holding these hearings and saying the only thing more exciting than a hearing on this bill would be a markup on this bill.

Chairman BACHUS. I also do think that the OCC, maybe a real estate commissioner would be—certainly we should hear testimony from them at a later date before we proceed.

Mr. Edwards?

Mr. EDWARDS. I think you had the letter from the chairman of ARELLO, which is the Association of Real Estate Commissioners. I do think it would be a good idea, as a witness, to have possibly one or two state real estate commissioner, because I have had several of them come to say, "This is an opportunity for unlicensed brokerage."

But I think that is an area that ought to be looked into, because I think that your letter that you received points out who is the regulator, who would be? Would it be the OCC or would it be the Tennessee Real Estate Commission? I do not know that we have answered those questions, nor would we know as an industry, if it were done tomorrow, what would go next. Who do you report to? So I think that that would be a good idea. Thank you.

Chairman BACHUS. Okay. At this time, we will recess and—well, not recess, we will adjourn the hearing.

[Whereupon, at 6:26 p.m., the subcommittee was adjourned.]

A P P E N D I X

July 24, 2002

OPENING STATEMENT OF
CHAIRMAN SPENCER BACHUS
HEARING OF FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE ON H.R. 3424, THE COMMUNITY CHOICE IN REAL ESTATE ACT
JULY 24, 2002

The Subcommittee meets today for a legislative hearing on H.R. 3424, the Community Choice in Real Estate Act.

Ever since the Federal Reserve and the Treasury Department issued a proposed rule in January 2001 to permit banks to engage in real estate brokerage, a vigorous debate has raged between those who believe that the proposal is an appropriate application of the agencies' authority under the Gramm-Leach-Bliley Act, and those who warn that it could seriously undermine the separation between banking and commerce that Congress reaffirmed in that same landmark legislation. One indication of the controversy engendered by the proposed rule is the number of submissions that the Federal Reserve and the Treasury received during the four-month public comment period – over 44,000.

On May 2, 2001, this Subcommittee held the first congressional hearing on the proposed Fed-Treasury rule, taking testimony from the regulators as well as a broad cross-section of industry groups on both sides of the issue. In the 15 months since the Subcommittee's hearing, there have been a number of developments that I want to take a moment to summarize for Members.

In December 2001, Mr. Calvert and Mr. Kanjorski introduced H.R. 3424, the subject of today's hearing, which amends the Bank Holding Company Act to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or management services. At last count, H.R. 3424 had 245 cosponsors in the House. A Senate companion bill has attracted 18 cosponsors.

In April, in response to Chairman Oxley's request for a status report on their rulemaking, the Treasury and the Federal Reserve announced that they would delay until next year any further action on the real estate issue, citing the urgent priorities created by September 11th as the primary obstacle to completion of the process this year.

Earlier this month, the Appropriations Committee – over the jurisdictional objections of this Committee – inserted language in the Treasury-Postal spending measure that would block implementation of the proposed rule during fiscal year 2003 – or until October of next year at the earliest. The version of the Treasury-Postal appropriations bill that the full House is expected to approve later today includes the real estate provision added in the Appropriations Committee.

I was one of the first Members of Congress – along with the gentleman from Pennsylvania, Mr. Kanjorski – to challenge the regulatory proposal to allow banks into the real estate brokerage business. I convened last year's Subcommittee hearing to ensure that Members of this Committee had an opportunity to be heard on an issue that is of critical importance to so many of our constituents.

Like the proponents of H.R. 3424, I have been concerned that the Fed-Treasury proposal threatens to erode the long-standing separation between banking and commerce that Congress recently sought to fortify in the Gramm-Leach-Bliley Act. Moreover, important questions remain regarding whether the current Federal and State regulatory framework is sufficient to ensure the adequate supervision of bank real estate activities, assuming the proposed rule is ultimately implemented.

I respect the views of those who feel differently about this issue than I do, and those views are well-represented on the second panel of witnesses that we have assembled for today's hearing. Before recognizing the Ranking Member for an opening

statement, I'd like to thank all of our witnesses for being here today, particularly our colleague from California, Mr. Calvert. This is a contentious issue with strongly-held views on both sides, and yet at our first hearing on the issue last year, I was impressed – as I think other Members were – by the civility and reasoned tone of the debate. I hope that we can meet that same high standard at today's hearing, and I believe that we will.

Opening Statement of Rep. Bob Barr
Subcommittee on Financial Institutions Legislative Hearing on
H.R. 3424, "Community Choice in Real Estate Act"

July 24, 2002

Mr. Chairman. Thank you for scheduling this hearing on H.R. 3424, a measure which I strongly support and am pleased to cosponsor.

Over the last two centuries, Congress has repeatedly and explicitly prohibited financial institutions from engaging in commercial activity. The National Bank Act of 1864 prohibited federally chartered banks from engaging in commercial activities.[1] This policy was strengthened during the Great Depression, when Congress moved to prohibit a single business entity from engaging in both commercial banking and investment banking businesses.[2] In 1956, the Bank Holding Company Act[3] limited the non-banking activities of multiple-bank holding companies and brought them under the control of the Federal Reserve Board, Subsequent legislative pronouncements have been clear and unequivocal, and are underpinned by an equally clear and immutable policy rationale: mixing baking and commerce would create market distortions that would unfairly benefit commercial banks, and introduce potentially devastating distortions into competitive commercial and financial markets.

As we all know, on January 3, 2001, that Federal Reserve Board and Treasury Department issued a proposed rule which would redefine financial activities to permit banks to compete in the real estate brokerage and management markets. H.R. 3424 would stop this proposed rule, and maintain the carefully balanced status quo set forth by Gramm-Leach-Bliley. Opponents of H.R. 3424 can point to no language in the Gramm-Leach-Bliley Act (GLBA) which delegates to federal agencies general authority to abrogate this fundamental and long-recognized principle. The text and legislative history of GLBA clearly demonstrates Congress intended the historic firewall between banking and commerce to be preserved, not destroyed. During congressional consideration of GLBA, Federal Reserve Board Chairman Alan Greenspan urged Congress to maintain the historic separation between commercial and financial activities. In testimony before this Committee, Chairman Greenspan stated:

> "As technology increasingly blurs the distinction among various financial products, it is already beginning to blur the distinctions between predominately commercial and banking firms...It seems to us wise to move first toward the integration of banking, insurance, and securities...and employ the lessons we learn from that important step before we consider whether and under what conditions it would be desirable to move to the second stage of full integration of commerce and banking. The Asian economic Crises last year highlight some of the risks

[1] 13 Stat. 99, 101, codified at 12 U.S.C. § 165 (2000)
[2] Glass-Steagall Act or The Banking Act of 1993, 89, 48 State. 162 (12 U.S.C. § 340-360, repealed).
[3] 70 Stat. 133, codified in scattered sections of 12 U.S.C. (2000).

> that can arise if relationships between banks are commercial firms are too close."[4]

Clearly, the advice of Chairman Greenspan was ignored by the Clinton Treasury Department, which noticed this proposed rule shortly after GLBA went into effect.

The Legislative history of GLBA further highlights the intent of Congress to place limits on the authority of the unelected of federal agencies to determine which activities are "financial in nature or incidental to financial activities." The Report states:

> "This authority includes authority to allow activities that are reasonably connected to one or more financial activities...[t]he authority provides the Board with some flexibility to accommodate the affiliation of depository institution with insurance companies, securities firms, and other financial service providers *while continuing to be attentive not to allow the general mixing of banking and commerce in contravention of the purposes of this Act.*[5]

Finally, former Chairman Jim Leach, a principal author of GLBA, stated:

> "Of all the things I am proud of in the modernization legislation, it is that our government's two principal financial bodies – the Treasury and the Fed stand with me against mixing commerce and banking. There should be no misunderstanding. If this precept had been included in the final legislative product, I would have done my best to pull the plug on financial modernization."[6]

The substantive merits of reversing the proposed rule are overwhelming, and the 245 cosponsors of H.R. 3424 clearly demonstrate the Treasury Department and the Federal Reserve are flouting the intent of Congress by proposing this rule. However, the grave flaws in this proposed rule are not confined to policy alone.

On May 16, 2002, the Judiciary Committee Subcommittee on Commercial and Administrative Law, which I chair, conducted a hearing on procedural and administrative aspects of the proposed rule. Specifically, the Subcommittee examined the following questions:

- Did the statute giving rise to the proposed rule provide sufficient congressional authority to transform the definition of "financial activity" without congressional consent?
- Was the language in GLBA sufficiently clear to provide a coherent basis upon which the respective agencies could make this determination?

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[4] Statement of Federal Reserve Chairman Alan Greenspan, Cong. Rec, S4626 (1997).
[5] S. Rep. No. 106-44, at 21 [available at http://thomas.loc.gov/cgi-bin/cpquery/R?cp106: FLD010:@1(sr044)].
[6] Press Release of Rep. Jim Leach, May 17, 2000.

- Can – *should* – Congress delegate its authority to regulate interstate commerce without any cognizable constraints on agency discretion?
- Did the issuing agencies provide a sufficient factual or legal basis for concluding that real estate brokerage and management are "financial activities?"
- Were the procedural requirements of the Administrative Procedure Act and the Regulatory Flexibility Act adequately observed?
- How will the agencies consider and act on the public comments they have received?
- How will the proposed rule affect consumer privacy?

During the course of the Subcommittee hearing, it became obvious the procedural bases on which the rule was issued were deeply flawed. Not only did the issuing agencies ignore the text and legislative history of GLBA, they totally disregarded relevant and applicable administrative procedures and precedents, but the overwhelming weight of public opinion against this rule as well.

Since the advent of the modern regulatory state, Congress and the President have continuously sought to craft an administrative process that treats all parties and all perspectives fairly. While we have striven to obtain the best possible agency rules, another, equally important purpose is to make the administrative process an open on that informs the American people about the actions of its government. The proposed rule does not advance this goal, it thwarts it. If finalized, the rule would substitute overwhelming public sentiment and the will of Congress with the arbitrary and capricious dictates of unelected agency bureaucrats.

The American people deserve better, and Congress has a responsibility to reverse this proposed rule by passing H.R. 3424. The last thing America needs is the additional financial uncertainty that finalization of this rule would invite. I wish again to thank the Chairman for scheduling a hearing on this important legislation and urge a speedy markup of this bill.

Chairman Bachus, Ranking Member Waters and Members of the Subcommittee,

Thank you for the opportunity to come here today to testify on behalf of H.R. 3424, the Community Choice in Real Estate Act. I introduced this bill on December 6th, 2001. It now has two-hundred-forty-five cosponsors, more than a majority of House Members.

The Gramm-Leach-Bliley Act specifically granted many new powers to federally chartered banks as a result of many years of debate. Real estate brokerage and management were not among them.

Gramm-Leach-Bliley passed the House by one vote. I can guarantee you that if real estate brokerage and management were included as permissible activities for federally chartered banks to engage in, the bill would have gone down to defeat in the House. I, for one, would not have voted for it. To the contrary, many of us were given assurances that real estate brokerage and property management were not at all considered to be anything but commercial activities, so we voted for the bill and moved on.

The Community Choice in Real Estate Act was made necessary once the banking interests decided to ask the Treasury Department for powers to become involved in real estate brokerage and management. These extraordinary new powers were requested before the ink on the Gramm-Leach-Bliley Act was dry. There were no changes in the marketplace, no technological advances, only the desire to expand the powers of the national banking interests. As we have seen with rising ATM fees and increased consolidation, expanding banks' powers and scope have not corresponded with increased customer satisfaction.

The average banker has a great relationship with the local real estate agent. They have a symbiotic relationship. But the community bank has largely disappeared, and our national banking system has become cold and impersonal, more focused on acquisition and market dominance than on customer needs. You only need to grab yourself a copy of American Banker to see this trend. For example, in a recent article titled "Shakeout Seen from Financing Decline" there are some very interesting observations from some very prominent members of the banking industry like: "We do quite well with our individual loan officer recruitment, taking advantage of our less fortunate competitors." and "You can't be a small player, and you can't be in the middle." Over the years, the national banking industry has become the antithesis of the small business success story, and it is now trying to take over one of the best examples of competitive small business markets in America today- the Real Estate industry.

I must stress, this consolidation and expansion is not driven by your average local bank employee, whom I have found to be professional, courteous and attentive. It is driven by national banking interests and banking executives focused on being acquired by a national bank and rewarded with the perennial "golden parachute." Of course, these are the same interests driving this debate over

the nature of "financial activity" today. The industry as a whole has been focused on expanding their powers, but a clear majority of our colleagues believe that the line must be drawn at clearly commercial activities like real estate brokerage and management.

During consideration of the Gramm-Leach-Bliley Act, Congress voted to clearly maintain this separation. We voted to eliminate the commercial market basket from the bill. In addition, we required any entity formed after enactment of the bill to divest any commercial operations that were part of it within ten years. The purpose of the Community Choice in Real Estate Act bill is to once again clarify, for all of those involved in this debate, that it was Congress' intent that banking and commerce remain separate.

Bankers knew then that they couldn't have obtained real estate powers from Congress. So they are now attempting to gain these powers from their regulators. It is our duty to assert Congressional authority over this matter. To quote Congressman Leach in his opening remarks during the debate on H.R. 10,

> "As we all know, there are complex issues involved in this legislation, and there will be differing judgments by Members. One thing we all may agree upon, however, is that Congress needs to reassert its Constitutional role in determining what should be the laws governing financial services, instead of allowing the regulators and courts to usurp this responsibility."

It is time to stop this blatant end-run around Congressional intent. If the national banks will not withdraw their ill-considered petition, then it is time to pass the Community Choice in Real Estate Act.

I'm glad that you have given us an opportunity to have this debate here today Mr. Chairman, and I appreciate your consideration of this bill.

July 24, 2002

Opening Statement for Congressman Paul E. Gillmor
House Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit
Hearing on HR 3424, the Community Choice in Real Estate Act

I would like to thank Chairman Bachus for holding this hearing today to allow the House Financial Services Committee and specifically this subcommittee to begin consideration of this bill rightfully referred for our review.

The subject of this legislation is not new to me. As a member of the House Energy and Commerce Committee during the 106th Congress, I was directly involved in negotiations on the Gramm-Leach-Bliley Act (GLB). The GLB amended the Bank Holding Company Act to allow a bank holding company or other qualified financial holding company (FHC) to engage in a wide range of activities that are defined as financial in nature. The FHCs are now additionally authorized to engage in other activities that are financial in nature, or incidental to a financial activity, as established by regulation or order by the Federal Reserve Board in consultation with the Secretary of the Treasury.

The issue of banks engaging in real estate brokerage activities was addressed during the GLB deliberations. After extended negotiation it was determined that the decision on whether or not real estate brokerage or management is "financial in nature or incidental to a financial activity" should be left to the Federal Reserve and Treasury.

I stand by this determination and feel that the Federal Reserve and Treasury are in the best position to consider the varied factors involved in such a decision. In GLB, Congress adequately detailed the significant factors that must be addressed during consideration on a ruling of this type. They are directed to ensure that the overall purposes of GLB are upheld and I have every reason to believe they will do so.

The rule-making process regarding real estate brokerage and management was begun on January 3, 2001 and on May 2, 2001 and this subcommittee heard testimony from both the Federal Reserve Board and the Treasury Department on this issue.

I look forward to hearing the testimony of today's witnesses and feel this issue is worthy of additional debate to the extent that any proposed rule is subject to congressional oversight.

Opening Statement
For
Congressman Rubén Hinojosa (TX-15)

Committee On Financial Services
Subcommittee on Financial Institutions and Consumer Credit
Hearing on H.R. 3424, Community Choice in Real Estate Act
July 24, 2002

Mr. Chairman and Mr. Ranking Member,

I want to thank you for calling this important hearing today on H.R. 3424, the Community Choice in Real Estate Act. This bill, introduced by my good friend and colleague, Congressman Ken Calvert, aims to clear up any confusion the banking and real estate industries might have in relation to the Gramm-Leach-Bliley Act.

While the GLB Act helped federally charted banks access many new services and industries in the financial market, I believe that it did not include real estate brokerage.

This legislation and this hearing gives us the opportunity reexamine whether or not these two industries should be allowed to merge or share in similar business enterprises. As a representative of a congressional district where minority and low-income home ownership are a top concern, I am especially interested in how the potential merger of these two industries will impact the Community Reinvestment Act, predatory and sub-prime lending, and low-income and first time home owner loan programs. Mr. Chairman, I hope the panelist will address these issues and I look forward to their remarks.

Mr. Chairman, once again thank you and I yield back my time.

TESTIMONY OF
CONGRESSMAN PAUL E. KANJORSKI

BEFORE THE SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HEARING ON H.R. 3424, THE COMMUNITY CHOICE IN REAL ESTATE ACT

WEDNESDAY, JULY 24, 2002

Mr. Chairman, thank you for the opportunity to testify about H.R. 3424, the Community Choice in Real Estate Act, which would prohibit national bank holding companies and their subsidiaries from engaging in real estate brokerage and property management. As you know, I drafted this bill and then late last year introduced it along with my colleague from California. This hearing represents the first time the Financial Institutions Subcommittee has met to deliberate over our legislation.

As part of the 1999 law to overhaul and modernize our nation's financial services industry, we created a framework that prohibits the mixing of banking and commerce, but which permits financial institutions to engage concurrently in banking, insurance and securities activities. During our lengthy considerations of this groundbreaking law, I strongly supported maintaining the firewalls separating the financial and commercial sectors.

The testimony heard yesterday in the Senate about the cozy relationships between Enron and its investment bankers demonstrates some of the dangers of mixing banking and commerce. At the Senate's hearing, we learned more about how some investment bankers may have misrepresented the true nature of their transactions with Enron in order that the energy company could conceal its real financial state and keep large sums of debt off its books. If we allow the firewall between banking and commerce to disintegrate, there is a strong possibility that troublesome transactions like these would significantly increase and hurt our economy.

To underscore our concerns about the integration of banking and commerce activities, Congress in the 1999 statute specifically banned financial institutions from entering real estate development and investment services. Although real estate management and brokerage represent non-financial, commercial activities, in one of their first acts of interpreting the groundbreaking law, the Federal Reserve and the Treasury Department nevertheless issued a proposed rule that would allow national bank holding companies and their subsidiaries to engage in these pursuits.

Upon learning about the proposed rule, I joined with you, Mr. Chairman, in sending a letter to Chairman Greenspan and Secretary O'Neill to express deep concerns. That letter was signed by approximately three-quarters of the Members of the Subcommittee on Financial Institutions. To their credit, the Federal Reserve and the Treasury Department responded to our inquiry by prolonging the comment period on their proposed rule.

Despite this decision, much uncertainty continued throughout last year about whether, when, and how the two financial regulators would act on their contentious proposal. As you know, Mr. Chairman, I very adamantly oppose this ill-advised regulatory change. That is why I drafted, introduced, and very strongly support the Community Choice in Real Estate Act.

-more-

We designed our bill to maintain a broad array of choices for American homebuyers and home sellers. As you know, Mr. Chairman, H.R. 3424 would make it clear that national banks and federally chartered bank holding companies cannot enter the business of real estate brokerage and management. Our legislation would remove no existing authority from these financial institutions. Instead, H.R. 3424 would simply prevent federal regulators from allowing their proposal to move ahead. Since we introduced the Community Choice in Real Estate Act last December, 244 House Members – representing diverse political, geographical and ideological backgrounds – have joined us in supporting this important legislation.

In addition to preventing the mixing of banking and commerce, the supporters of the Community Choice in Real Estate Act raise numerous other concerns about the regulatory proposal and the need for this legislation. For example, this proposed rule change will have significant social ramifications for our localities and communities. Our nation's realtors provide invaluable community services and leadership to the localities where they live and work. Even if this proposal could in the short run initially result in saving consumers a few basis points, it would in the long run stifle the important community leadership provided by our nation's realtors. That is why I put the word "community" in the Community Choice in Real Estate Act.

Furthermore, the proposed regulation, if finalized, will likely knock many small, independent real estate brokers and managers out of business. This situation would create less competition and eventually result in increased costs and less options for homebuyers. That is why I put the word "choice" in the Community Choice in Real Estate Act.

In recent months, Secretary O'Neill, in observing the high volume of comment letters and the sensitivity generated by this issue, consulted with Chairman Greenspan and decided to postpone a decision on the proposed rule until 2003. I welcomed their announcement. As you know, these regulators received more than 50,000 comments on the real estate management and brokerage rule. They should therefore move cautiously in their deliberations.

In the end, however, this issue is one on which the Congress should have the final word. A majority in the House has joined together to send a clear message that real estate brokerage and property management are commercial business activities and not financial activities. Consumers and small businesses have also lined up behind our efforts. It is, as a result, now time for our Committee to do the right thing and pass H.R. 3424.

In closing, Mr. Chairman, allowing banks to engage in real estate management and brokerage will only hurt consumers, communities, and our economy. We are as a result seeking to stop a problem before it begins. I therefore very strongly urge the Financial Services Committee and then the U.S. House of Representatives to approve H.R. 3424 before the end of the 107th Congress.

STATEMENT FOR FINANCIAL SERVICES SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT HEARING ON H.R. 3424, THE COMMUNITY CHOICE IN REAL ESTATE ACT

July 24, 2002

Representative Max Sandlin

Mr. Chairman and Ranking Member Waters, I commend you for holding today's hearing on the Community Choice in Real Estate Act. I look forward to hearing from the witnesses who have agreed to testify before us today.

As members of this committee know, the Gramm-Leach-Bliley Act specifically prohibits financial holding companies and banks' financial subsidiaries from engaging in certain real estate activities, including investment and development. The rationale behind this prohibition is simple: while Gramm-Leach-Bliley allowed financial services companies to diversify and engage in new lines of business, the Act sought to prevent a breakdown in the wall between banking and commerce. And yet just one year after passage of Gramm-Leach-Bliley, the Treasury Department and the Federal Reserve attempted to hastily promulgate a rule that directly challenges congressional intent. As if there was any doubt as to Congress's intention to maintain banking and commerce as separate activities, as of today, *a majority of the House* – 245 members of Congress, including 26 members of this committee – have cosponsored H.R. 3424. Congressional intent on this matter is clear, and while the regulators have the statutory authority to allow financial holding companies and their subsidiaries to expand into new businesses, Congress has a duty to clarify intent to prevent unintended consequences from arising.

The proposed rule that would allow federally chartered financial services firms to engage in real estate brokerage and property management would not only defy Congress's clear intent to keep banking and commerce separate, but would actually redefine inherently commercial activities as financial in nature, or incidental to a financial activity. As some financial services firms shift away from their core businesses and diversify into new product lines in understandable attempts to increase profits, there is a significant danger of federally chartered, national banks engaging in real estate activities in local communities to which they have no connections. Additionally, no credible evidence exists that indicates a lack of competition in the real estate brokerage industry. To the

contrary, significant competition already exists within this industry. My concern is that consumers would not only *not benefit* from the entry of banking companies' into real estate brokerage, they would actually face *decreased* competition as large, national financial services firms consolidate and exert market power in our local communities.

Finally, while I support recent congressional efforts to prevent the Treasury Department from issuing the controversial rule in question, I am deeply concerned that this issue, which clearly lies within this committee's jurisdiction, will be handled through the appropriations process in the future. Mr. Chairman, I urge you to reassert the Financial Service Committee's jurisdiction over this issue by scheduling consideration of H.R. 3424 in this subcommittee before the end of this year.

Thank you Mr. Chairman.

CALIFORNIA ASSOCIATION OF REALTORS®

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Statement of

THE CALIFORNIA ASSOCIATION OF REALTORS®

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

PRESENTED BY

ROBERT J. BAILEY
PRESIDENT, CALIFORNIA ASSOCIATION OF REALTORS®

JULY 24, 2002

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Chairman Bachus, Representative Waters and members of the subcommittee. Thank you for inviting the California Association of REALTORS® to testify at this hearing on H.R. 3424, the Community Choice in Real Estate Act. As you know, CAR and its 110,000 members strongly support this legislation, along with 246 cosponsors in the House, as a restatement of congressional intent that banking and commerce should remain separate. I hope this is a step toward enactment of the bill, and that this committee will seek input from dozens of other consumer and business groups supporting H.R. 3424.

The members of the association are California real estate licensees who are engaged in the business of real estate brokerage, sales, mortgage brokerage and property management. Currently, the California membership accounts for approximately one-seventh of the nation's REALTOR® population and well over 90% of the 504,430 residential resale transactions occurring last year in California. As such, the membership is well versed in the nature of sales brokerage and property management and very well suited to comment on the proposal to allow banks and bank holding companies to engage in real estate brokerage and real property management.

Real estate plays a vital role in sustaining our Nation's economy. Today, the real estate industry is as vibrant and strong a force as it has ever been in history. Indeed, it is currently one of the few shining stars bringing our nation back to recovery. Thus, it is crucial that it continue to be allowed to function at its full capacity spurred on by zealous competition. The proposed rule by the Treasury Department and Federal Reserve Bank would smother the current flame of competition by allowing banks to enter and unfairly dominate the real estate industry. Banks and financial holding companies would be able to exploit their sizeable federal advantage to the detriment of consumers. History has shown us time and time again the evils that result when an industry is vested in a handful of behemoths. The end result is reduced choice and flexibility for the consumer ultimately resulting in increased overall costs. H.R. 3424 will ensure that the real estate industry remains strong, providing an abundance of choice at prices inspired by full competition to the benefit of consumers and our Nation's economy.

Background

Late in 2000, the American Bankers Association ("ABA") and Fremont National Bank & Trust Company, Fremont, Nebraska, asked the Board and the Secretary to determine that real estate brokerage and management activities are financial in nature. Two additional trade associations, the Financial Services Roundtable and the New York Clearing House Association, requested that the Board permit financial holding companies ("FHC") to engage in real estate brokerage activities.

Consequently, in January, the agencies jointly issued a proposed rule and sought comment on whether real estate brokerage is an activity that is financial in nature or incidental to a financial activity and therefore permissible for financial holding companies and financial subsidiaries of national banks. The Board and the Secretary also jointly sought comment on whether real estate management activities could be considered financial in nature or incidental to a financial activity.

The Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)) ("GLB Act") amended the Bank Holding Company Act (12 U.S.C. 1841 et seq.) ("BHC Act") to allow a bank holding company or foreign bank qualified as a financial holding company to engage in a broad range of activities that are defined by the GLB Act to be financial in nature. The GLB Act also amended the National Bank Act (12 U.S.C. 1 et seq.) to allow a national bank to invest in financial subsidiaries. Financial subsidiaries may engage, with certain exceptions, in the same broad range of activities that are defined by the GLB Act to be financial in nature and, therefore, permissible for FHCs. The GLB Act also permits FHCs and financial subsidiaries of national banks to engage in other activities that the Board determines, by regulation or order and in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.

When considering a request for a determination that an activity is financial in nature or incidental to a financial activity, the GLB Act directs the Board to consider a variety of factors including (i) the **purposes** of the BHC Act and the GLB Act; (ii) the changes or reasonably expected **changes in the marketplace in which FHCs compete;** and (iii) whether the proposed activity is necessary or **appropriate to allow a FHC to compete effectively** with any company seeking to provide financial services in the United States, efficiently deliver financial information and services through the use of technological means, or offer customers any available or emerging technological means for using financial services or for the document imaging of data. The Secretary must consider a virtually identical set of factors in determining whether an activity is permissible for financial subsidiaries.

It is the belief of the directors of the California Association of REALTORS® that real estate brokerage and property management fail to meet these tests. In particular, this change in bank and FHC powers cannot be:

- justified on the basis of Congress intent as evidenced by the legislative history and text of the GLB bill as well as the subsequent Congressional comments to the agencies on the proposed rule,
- found consistent with a defensible definition of real estate as a financial activity as opposed to its long held categorization as a commercial activity;
- classified as appropriate since there have been no changes in the environment within which the banks and FHCs exist and outlined by the Acts that would warrant the proposed changes, and
- justified by a finding that real estate sales and property management are incidental to a financial transaction.

Furthermore, many of the arguments to support the proposed rule are based on incomplete and/or incorrect information. In particular, the proposed changes will:

- not create a level playing field that will allow banks to compete with real estate brokerages who reportedly are involved in the" banks' business" by virtue of their mortgage operations,

- create a competitor for the real estate brokerage/property management companies with which the existing real estate firms cannot expect to compete given the federally-bestowed advantages enjoyed by the new entry, and

- not be in the best interests of consumers.

Conformity with the Purpose, Language and Congressional Intent of the GLB Act

C.A.R.'s leadership and membership do not believe that the proposed rule is in line with the purposes of the GLB Act. This belief is founded in the stated purposes of the GLB Act, the resulting language of the GLB Act, itself, and the response to the proposed rule of members of Congress who were involved in the passage of the Act.

Purpose: When Congress repealed Sections 20 and 32 of the Banking Act of 1933 as a part of the Gramm-Leach-Bliley Act, the intent was to strike the proper balance between the needs of financial institutions to compete in the modern marketplace, protect and serve consumers and assure the integrity of the financial system. What Congress was very careful not to do, however, was to allow the mix of commerce and banking.

This intent is best illustrated by comments made by Representative Jim Leach, chairman of the House Banking Committee when he addressed the ABA Leadership Council in March of 2000. He said " ...let me stress that it is important to note what the bill does not do. While opening financial markets to greater competition between banks, insurance companies and securities firms, *it forestalls the mixing of commerce and banking* and plugs the loophole in current law that breaches this principle." Rep. Leach, Chairman, House Banking and Financial Services Committee. Remarks Before ABA Leadership Council, Press Release, House Committee on Banking and Financial Services. March 28, 2000 (Emphasis supplied.)

The "loophole in current law that breaches this principle" was addressed in the debate about financial institutions and commercial firms owning each other and issues related to the commercial-owned unitary thrifts. As you are well aware, the GLB Act included provisions that specifically eliminated the ability of a commercial firm to own a unitary thrift.

Significantly, throughout the debate of the GLB Act, Congress resisted and continually rejected efforts by the representatives of the financial services industries to include real estate activities among the definition of new financial service activities in which financial institutions would be permitted to engage. Congress engaged in a thorough debate on the issue and decisively voted in both chambers to exclude real estate development and investment -- the most financially related components of all real estate activities - as a permissible activity for national banks' financial subsidiaries.

While Congress could have eliminated the barriers between financial services and commercial business, the express language of the Gramm-Leach-Bliley Act makes clear that was not its intent. Ultimately, the conclusion must be reached that Congress had no intention to include real estate activities among the new financial activities to be allowed financial holding companies under the provision of the Gramm-Leach-Bliley Act because those activities were always considered by Congress to be commercial, not financial, in nature.

Congressional Reaction to the Proposed Rule. Perhaps the most telling indication that it was not the purpose of the Act nor the intent of Congress to allow banks and bank holding companies to enter into the real estate brokerage and property management business has been the way in which members of Congress have responded to the proposed rule with surprise and chagrin. As one member of the last year's Banking committee commented to Mr. Greenspan during the Federal Reserve Board chairman's recent appearance before the newly constituted Financial Services committee,

> *"...when we voted to massively expand the activities that banks could engage in, (we) did not anticipate that they would get involved in activities outside dealing with securities, investments and intangibles, but would instead become brokers for the quintessential opposite of intangible property, namely, real property." (Rep. Sherman, February 2001 Financial Services Committee hearing)1*

The letters sent to the Federal Reserve and Treasury by more than 160 members of Congress, including 33 out of 51Californians, have echoed Mr. Sherman's characterization of what had been Congress' intent. These same letters have expressed their concerns with the likelihood that financial and commercial firms would be mingled. The members of Congress who have written represent all areas of the nation, all political persuasions and members from both sides of the aisle. A more bi-partisan response is hard to imagine.

Legislative Language of the GLB Act. As noted above, the GLB Act as enacted specifically defines activities that are financial in nature. The allowed activities are described as follows:

- Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;
- Providing any device or other instrumentality for transferring money or other financial assets; and
- Arranging, effecting, or facilitating financial transactions for the account of third parties.

Real estate brokerage and property management are not included in this list of permissible activities, either explicitly or through any logical/sensible extension of these criteria. We believe that the arguments put forth by the banking industry that "investing for others" could be used to describe the residential purchase transaction and, therefore, real estate brokerage should be considered a financial activity are the result of a wishful stretch of logic.

For most individuals and families, the purchase of a house is not undertaken for investment purposes but is rather the first step in creating a home, a place to call their own. It is a purchase that arises out of a job change, the need for more space or a better neighborhood, or the simple desire to have a permanent place to live that can be tailored to meet their individual needs. These reasons for a home purchase have been documented by C.A.R.'s Housing Finance Survey for twenty years. In the most recent study, 20.8 percent were attributed simply to being "tired of renting," i.e. the desire for a permanent place to live and modify as needed; 21.4 percent of moves resulted from a need for more space; 16.3 percent resulted from a desire for a home in a better neighborhood; and 8.1 percent of transactions were motivated by a job change.

It is true that, as the result of the growth of the U.S. economy and population, some homes have appreciated and have been "good investments." Unlike a stock or securities purchase where the motivation is to own an intangible asset whose sole reason for existing is to increase in value, the investment advantages that accrue from the purchase of a home are secondary in nature. This is especially true the past ten years here in California where people are very aware that homes can also lose value as they did here from 1989 to 2000. In the most recent C.A.R. Housing Finance Survey, only 10.6 percent of homebuyers indicate that their home purchase was motivated by either a desire to invest or for tax considerations.

As the Board and Treasury requests for comments also pointed out, just because an item might be purchased for investment purposes does not necessarily imply that the item purchased is a financial asset. Boats, jewelry, paintings and antiques are prime example of goods that clearly are not financial goods but are purchased for their potential appreciation and investment purposes.

Real Estate as a Financial Vs. Commercial Activity

Given the intent reflected in the legislative history of the GLB Act and the bank powers discussions and debates of prior years, it is clear that Congress did not intend to allow the mix of banking and commerce – a mix that Congress, the Board and the Secretary had long argued was not desirable. The next questions then must be: Are real estate brokerage and property management commercial or financial activities? Is there any basis for making a finding that these activities should now be considered a financial activity?

Traditionally, financial assets and commercial assets have been distinguished on the basis of their tangibility. Financial assets are intangible, i.e. they represent value but have either no intrinsic value or no material being in and of themselves. Examples would include stocks, bonds, securities, insurance policies, good will, and the like. Those assets that are tangible, i.e. corporeal and able to be appraised for value, have been considered commercial assets. Examples of tangible goods or assets would include foodstuffs, clothing, books, cars, boats and real estate. This approach has been reflected in the common definitions of the terms, "finance" and "commerce." Webster's New World Dictionary, for example, defines finance as the money resources, income, etc. of a nation, organization or person and commerce as the buying and selling of goods.

Some proponents have argued that real estate brokerage should be considered a financial activity since the purchase of real estate involves a financial activity, i.e. the making of a loan. C.A.R. believes that accepting this argument as a basis for determining what is an allowable activity for a bank or bank holding company is fraught with problems. A car or boat purchase is also commonly financed with a loan – does this mean that banks and BHCs should be allowed to broker car or yacht sales? With this guideline, there would be few activities that would not be allowed to banks and BHCs.

To argue that real estate is a financial asset is to fly in the face of the long-standing and common usage. The California Association of REALTORS® strongly believes that there is no justification for identifying real estate and property management as financial in nature.

Is Real Estate Incidental to a Financial Activity

A question that must be addressed by the Board and Secretary in any finding of a new financial activity under the terms of the GLB Act is Are real estate brokerage and property management incidental to a financial transaction? Webster's New World Dictionary defines incidental as:

> *"a. happening as a result of or in connection with something more important, b. likely to happen as a result or concomitant (to or with)..."*

While supporters of the proposed rule have argued that a real estate brokerage transaction is incidental to a financial service, i.e. the mortgage loan, C.A.R. believes that, in fact, the opposite is really the proper characterization. That is, the loan transaction is incidental to the purchase of the home. Without the home purchase, there would be no mortgage loan and therefore no financial activity. Likewise, in the case of a refinance, second mortgage or home equity line transaction, there would be no financial activity if there were no home to collateralize the transaction. The home purchase therefore would seem to be the necessary and "more important" condition for the financial transaction.

Furthermore, it is possible to have a real estate transaction without a loan transaction, either as the result of an all cash sale, a tax deferred transaction or a trade of equivalent properties or other assets. In California in 2000, for example, fully 15.7 percent of sales transactions involved no bank financing. The converse – a mortgage loan without a home - is not possible.

To characterize the real estate transaction as incidental to the loan transaction seem to be a case of stretching the logic of what constitutes an incidental activity much too far.

Do Real Estate Brokerage Firms Compete Unfairly with the Financial Service Firms for the Mortgage Business?

One of the main arguments used by the supporters of the proposed rule in their meetings with members of Congress and the press has been that integrated real estate firms currently provide a

full array of services including brokerage, mortgage lending, title insurance and property insurance and therefore, banking institutions should be allowed to compete in brokerage.

It is true that many real estate firms today offer an array of services connected to the home purchase transaction including mortgage services. It is important, however, to understand what sorts of mortgage services are provided by these firms and the source of the funding provided. The overwhelming majority of real estate brokerage firms act as a mortgage broker. In this capacity, the mortgage broker searches out the best loan product for the potential homebuyer. He/she takes a mortgage application and from the information provided and his/her knowledge of loan products offered by a large numbers of banks, thrifts or mortgage banking firms matches the potential buyer with the institution making the loan. This structure is the most common way for the majority of firms to provide mortgage services since even most large regional firms do not have the financial resources to fund any volume of loans.

Though the paperwork and packaging for the loan is done by the mortgage broker associated with the real estate brokerage, the actual loan funding typically comes from the very banking industry that is objecting to this activity. Mortgage brokers have existed for decades now and account for more than 50% of all loan transactions. Perhaps most interesting is the fact that, in many cases, these broker-lender relationships have been established by the lending institution themselves as a way to increase their capture rate in a given market area.

In addition to these arrangements, there are a few national realty firms that have begun to offer mortgage funding directly. It is important to note that these companies do so in accordance with all state and federal laws. What funding these real estate companies do, however, they do so without the federal subsidies and marketplace advantages available to a FHC.

As Chairman Greenspan testified on July 13, 1997, before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services of the U.S. House of Representatives, there is an inherent government subsidy of commercial banking institutions, which exists at both the holding company and bank levels. The Chairman noted that this provides a competitive advantage of the entire banking organization relative to its non-bank competitors.

Federal deposit insurance, access to the Federal Reserve discount window, 10-12% discount on debt offerings, market position as part of the nation's payment system which attracts billions of dollars in non-interest bearing checking accounts, and the inherent advantage of being " too big to fail" are just a few reasons why banks would have an unfair competitive advantage over even the integrated real estate companies such as Cendant.

Purported Consumer Benefits

If the agencies were to promulgate this proposed rule as a final rule, C.A.R. believes that this massive change in industry structure will significantly alter the nature of the services that a consumer will receive from a real estate agent.

Today, the preponderant portion of the approximately 40,000 real estate brokerage firms nationwide are small, locally based, independent offices -- according to the National Association of REALTORS® survey data, eighty-two percent of brokerage firms have a single office, and only five percent have more than three offices. The average brokerage firm operates one office and has a sales force of about eight agents, while the median firm has four agents. Sixty percent of firms have five or fewer agents.

Each agent typically acts as an independent contractor and competes for a clientele. As a consequence, what typically distinguishes a successful agent is the level of knowledge and individual service they provide a client. It was not by chance that the tag line, ***"You have a life. We let you live it. Real estate is our life."™*** was chosen for the successful REALTOR® advertising campaign.

Our research has shown that agents typically play a major role in the choice of settlement service providers. When surveyed as to who influenced their choice of lender, California homebuyers indicated identified the sales agent as the primary influence. Agents will recommend those lenders, who they have found, provide a range of loan products designed to meet the needs of the prospective buyer. Mortgage brokers have become a favorite of agents and consumers, in part, because they offer clients loan products chosen from multiple lenders. In many large firms, company policy may even spell out that an agent must recommend more than one lender. N.A.R survey data indicates that agents representing larger brokerage offices typically recommend three prospective lenders to a buyer.

As Cendant and others with in-house lending operations have discovered, an in-house lender will not be used by the independent contractor sales agent – whose livelihood depends upon a closed transaction - unless the in-house lender has proven that they can provide an equal or better product and higher level of service than an outside lender or mortgage broker. Anecdotal evidence would seem to suggest that an in-house brokerage that is able to capture 30 percent of an office's loan business is a very successful operation.

We question whether or not agents affiliated with a lender-owned brokerage would or, indeed, could continue to fulfill this function of providing independent advice to buyers. At the very least, there would be implicit, if not explicit, disincentives for agents to recommend that buyers seek financing from unaffiliated lenders. It is also likely that brokerage firm practices or policies of recommending multiple financing sources would be far less prevalent.

More troubling, though, is the perception that a homebuyer may have that dealing with a bank-owned sales brokerage will increase their chance of obtaining a loan or more favorable loan terms. This perception will give a bank-owned real estate brokerage a competitive advantage that no independent firm could counter. It is unlikely that a local independent real estate broker would be able to counter the multi-million dollar "branding" television, radio and magazine ads that are undertaken by large financial entities and which will benefit any bank-owned realty operation.

Property Management as a Financial Activity or Incidental to a Financial Activity

Property management is a service of some real estate brokerage firms and a larger number of property management-only firms. The primary functions of property managers include day-to-day on-site management, attending to maintenance needs both immediate and long-term, and leasing.

Nothing among this entire range of activities bears any logical, rational, or even incidental relationship to banking and financial activities, and we respectfully suggest there simply is no basis for determining that real property management is "financial in nature" or "incidental to a financial activity".

Conclusion

C.A.R. believes that the proposed rule goes far beyond the authority given the Federal Reserve Board and the Department of Treasury by the Gramm-Leach-Bliley Act. Congress originally exhibited its wisdom by requiring financial and commercial activities to be kept separate, so that each industry could focus on its strengths and to prevent banks from unfairly exploiting their federal advantages. We strongly urge Congress to reaffirm its original wisdom by passing H.R. 3424, preventing financial institutions from entering the real estate industry. By so doing, the real estate industry will continue to shine with the brilliance generated by full competition and serve as our Nation's guiding light towards recovery. On behalf of the members of the California Association of REALTORS®, I thank you for your consideration of our view.

Written Statement

of

Stephen Baird
President and CEO
Baird & Warner, Inc.

On Behalf of

The Realty Alliance

Before the
U.S. House of Representatives
Subcommittee on Financial Institutions and Consumer Credit
of the
Committee on Financial Services

On

H.R. 3424, The Community Choice in Real Estate Act

July 24, 2002

Good morning, Mr. Chairman and members of the Subcommittee. My name is Stephen Baird, and I am President and CEO of Baird and Warner, Inc.

Baird & Warner has 35 real estate brokerage offices throughout the Chicago metropolitan area. Our 2001 residential sales volume of $4.2 billion ranks us as the 12th largest residential brokerage company in the United States. Baird & Warner Financial Services is a wholly owned subsidiary providing mortgage services to our clients. We represent 20 lenders and originated $700 million in mortgages in 2001. The company employs approximately 250 employees and 1320 independent contractor agents. As a five-generation family business, we are the oldest real estate company in the United States, dating back to 1855. Baird & Warner has been a member of NAR since its inception.

I am currently on the Board of Directors of the Realty Alliance. The Realty Alliance consists of 45 of the largest independently owned and operated real estate companies in America. I am speaking of their behalf.

Over the last 10-15 years, the members of The Realty Alliance have diversified their business around a one-stop shopping model. They no longer consist of just residential real estate brokerage, but have added such services as mortgage, title, insurance and home services.

With NAR's escalating opposition to banks entering the real estate business, our members have grown increasingly concerned that NAR's position and vehemence would have a negative impact on consumers, our companies and the industry as a whole.

This could not only significantly affect the operations of our members, but it would prevent us from offering the one-stop shopping programs that our customers both want and value, according to a March 2002 consumer survey conducted by Harris Interactive and sponsored by The Realty Alliance and RESPRO.

Because of this concern, The Realty Alliance began to seriously debate the pros and cons of nationally chartered banks entering the real estate brokerage and related businesses. At the end

of this debate, The Realty Alliance voted to support the Fed-Treasury proposed rule, by a vote of 41 to 4.

The following is a brief summary of why the vast majority of Realty Alliance members eventually concluded that nationally chartered banks should be allowed to enter our business.

Open Competition is the American Way

As the real estate industry has changed, real estate brokerage companies have looked to diversify and enter new businesses such as mortgage, title, and insurance. Just as we should be able to compete in these businesses, so should any other industry be able to enter and compete with us. Open competition is the American way. Today, more than at any time in history, it should be apparent that open, free markets are superior to closed, controlled, or regulated markets. Real estate brokerage should be treated no differently that any other industry.

There are certain areas of our business that could use a greater level of competition. Nationally-chartered banks could provide competition against other large entities entering the real estate brokerage business, such as Cendant, Prudential, and GMAC. This would certainly benefit the industry as a whole, since today these companies have little true competition.

Capital is Good for Our Business

Residential real estate has always been a capital-short industry, and we should encourage efforts to bring more capital to our business. We have struggled for many years to find enough capital to expand our businesses, to innovate, and to do research and development. Many of us have been faced with the inability to raise capital or borrow money to finance new programs. With an open market, capital would most certainly be more available.

Furthermore, capital provides liquidity for real estate brokerage firms of all sizes who are interested in selling their businesses in order to compete against large, significant players such as Prudential, GMAC, and Cendant.

Capital can enter our business in many ways. The ability to joint venture or create partnerships to grow our businesses or expand into new businesses has been a successful strategy for many real estate companies. By having new capital and resources available, combined with our entrepreneurial abilities, the future possibilities are endless. In other industries, such as insurance and securities, banks have typically partnered with existing companies more often than employing any other strategy.

Competition Will Make Us Better

Competition makes us all better. The argument that banks would be "anti-consumer" makes no sense. How could real estate brokerage be less competitive and anti-consumer if there are more companies offering new and different services?

Even though they work hard at relationship management, banks are not known for their customer service. When they entered the insurance business, their performance lagged significantly behind existing insurance brokerages. The negative reaction to raising ATM fees in California and in other states is another example. Real estate brokerage firms would be able to more effectively compete against a large financial institution than an entrepreneurial real estate brokerage firm in their marketplace that is smart, aggressive and competitive. And if the banks improve their customer service, it raises the bar for all of us.

It Will Affect the Prospects for RESPA Reform

Most importantly, our industry will be facing RESPA reform in the near future. RESPA reform will have a significant impact on how we practice our business and on our ability to build and grow our companies. How can we go to Washington and ask for the things that we feel are appropriate in RESPA reform and at the same time proclaim that banks and financial institutions cannot be allowed in our business? Not only would our credibility be questioned, but also our ability to lobby on future issues would be significantly compromised.

We feel it would be hypocritical to work toward RESPA reform by building a model for one-stop shopping while prohibiting certain financial entities from participating in that solution. One-stop shopping could and should be offered and available to everyone.

We Should Welcome New Players

Our industry has succeeded for many years by maintaining an open, competitive marketplace where all players can compete on an even footing, and we should welcome new entrants whomever they may be. When we erect regulatory boundaries or prohibit others from joining our business, it hurts us in the long run. Over the years, many companies including Sears, Merrill Lynch and Metropolitan Life have come into our industry with new ideas and new ways of doing things. Meanwhile, we have changed, grown and prospered. The challenges only make us stronger and better

Banks Will Continue to Be Able to Enter the Real Estate Business Anyway

In the long term, it is highly unlikely that banks will not continue to be in the real estate business. Currently, over 25 states permit their state chartered banks to engage in real estate brokerage either directly or through a subsidiary. Also, federal savings associations are authorized through service corporation subsidiaries to engage in real estate brokerage activities. This would mean that federal savings associations such as Washington Mutual, for example, could get into the real estate business today.

We already compete with large financial players such as Cendant, Prudential, and GMAC, and we see no difference between them and a large bank or a federal savings bank.

Mr. Chairman, the National Association of Realtors® does not speak for the vast majority of Realty Alliance members on this issue. We hope that you and members of the Subcommittee will consider our views on this issue as you consider this legislation.

Thank you for the opportunity to testify, and I would be glad to answer any questions.

Stephen W. Baird
Baird & Warner, Inc.

Since 1991, Stephen W. Baird has been the president and chief executive officer of Baird & Warner, Inc., Illinois' oldest and largest independent real estate company. Baird & Warner is also the oldest real estate company in the United States, dating back to 1855. Under his leadership, the company has grown significantly. Currently, with 35 offices and 1,163 sales associates, Baird & Warner posted a 2000 sales volume in excess of $4.1 billion.

Steve plays an active role in several industry groups. He serves on the board of directors for The Realty Alliance and the Cendant Mobility Broker Advisory Council. In addition, some of Mr. Baird's other activities include being past-president of the Openlands Project; president of CorLands, the land acquisition arm of the Openlands Project; a member of the Young Presidents' Organization and The Economic Club of Chicago; and a trustee of the Chicago Architecture Foundation, the University Club Foundation and the Morton Arboretum.

A 1975 graduate of Harvard University, he is active in the Harvard community: interviewing students for admission, serving as a director of the Harvard Club of Chicago, and lately, through his appointment as the Harvard Alumni Regional Director for Illinois and Wisconsin. He also serves as a director of the Alumni Board of Northwestern University's Kellogg Business School. Steve earned his MBA in 1985 from the J.J. Kellogg Graduate School of Management.

He and his wife, Susan, live on the North Shore with their two daughters, Abigail and Lucy.

Written Statement

of

George T. Eastment, III
Executive Vice President
Long and Foster Real Estate, Inc.

On Behalf of

The Real Estate Services Providers Council, Inc. (RESPRO®)

Before the
U.S. House of Representatives
Subcommittee on Financial Institutions and Consumer Credit
of the
Committee on Financial Services

On

H.R. 3424, The Community Choice in Real Estate Act

July 24, 2002

Good morning, Mr. Chairman and members of the Subcommittee. My name is George T. Eastment, III and I am Executive Vice President of Long and Foster Real Estate Services, Inc. a full service real estate home ownership company headquartered in Fairfax, Virginia.

Long and Foster Real Estate, Inc. has 200 residential real estate brokerage offices that engage in real estate sales and leasing in Virginia, Washington, D.C. Maryland, West Virginia, Delaware, and Pennsylvania, North Carolina, and soon New Jersey.

Long and Foster offers a full array of mortgage services through Prosperity Mortgage, which is a joint venture co-owned by Long and Foster and Wells Fargo Home Mortgage. We also offer personal, commercial, and financial insurance protection from over 50 insurance companies through Long and Foster Insurance, a wholly-owned insurance agency. Mid-States Title, another wholly owned company, runs five joint ventures that conducted over 10,000 settlements last year.

Our firm has 12,600 sales associates and employees, of which 9,000 are members of the National Association of Realtors.

I am a past Chairman of The Real Estate Services Providers Council, Inc. (RESPRO®) and I currently serve as its Treasurer, as a member of the Executive Committee, and as a member of the Board of Directors.

RESPRO® is a national non-profit trade association of approximately 200 residential real estate brokerage, mortgage, home building, title, and other settlement service companies who united in 1992 to promote an environment that enables providers to offer diversified services for home buyers and owners (one-stop shopping) through strategic alliances across industry lines.

Approximately 55% of RESPRO®'s members engage in residential real estate brokerage, either directly or as a franchisor. Most of our real estate broker members are

what I will refer to as "integrated" real estate brokerage firms, which means we also offer mortgage, title, and/or other settlement services to our customers.

Together, RESPRO® members who are in the real estate brokerage business closed over one million residential real estate transactions in 2001, utilizing over 300,000 sales associates and over 78,000 employees.

I. Position of RESPRO® on Bank-Real Estate Affiliations

RESPRO®'s Board of Directors supports the 2001 proposal by the Federal Reserve Board (Fed) and Treasury Department to allow financial holding companies and national bank subsidiaries into the real estate brokerage and related businesses by declaring these activities to be "financial in nature", and we oppose H.R. 3424, which would block this proposal.

All available evidence shows that home buyers like one-stop shopping, and that realty-based one stop shopping offers potential consumer benefits such as convenience and lower costs. RESPRO® supports a competitive marketplace that would allow *any* company to offer consumers these benefits, regardless of its industry or affiliation.

II. Today's Realty-Based One Stop Shopping Programs

According to a 1999 study conducted by the independent consulting firm of Weston Edwards and Associates, the top 350 real estate brokerage firms closed $22 billion in mortgage loans in 1998, and realty-based and builder-based lending accounted for about 10% of all purchase money mortgages that same year.[1] Edwards estimated that this amount would double to 20% within three years.[2]

"Changes in the Way Homes Are and Will Be Bought and Sold", By Weston Edwards & Associates, 1999.

2 Weston Edwards & Associates is expected to publish 2002 statistics in this area sometime in 2003.

Edwards also found that 69% of the 250 largest residential real estate brokerage firms in the country offer mortgages, and 31% offer title, closing or escrow or personal insurance in 1996.[3]

III. The Potential Consumer Benefits of Realty-Based One Stop Shopping

Since real estate brokerage firms began to enter mortgage and other financial services businesses over 20 years ago, there have been several consumer surveys and economic studies to assess their impact. All have conclusively shown that realty-based one-stop shopping programs in today's marketplace offer many potential benefits to the home buyer.

The most recent survey of consumer attitudes towards realty-based one stop shopping, which is attached to this testimony, was performed in March of this year. Harris Interactive, the parent of Harris Poll, surveyed 2052 recent and future home buyers and found:

- That 82% of home buyers would "strongly" or "somewhat" strongly consider using a one stop shopping service for their home purchase.

- That the three preferred sources of one-stop shopping programs are mortgage companies, banks and credit unions, and real estate brokerage firms.

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3 "One-Stop-Shopping For The Homebuyer: A Rapidly Expanding Channel of Distribution", by Weston Edwards & Associates, 1997. The business structures of these realty-owned one-stop shopping programs vary. Many of the largest firms have created wholly-owned mortgage lending or brokerage, title, and/or insurance subsidiaries. Smaller firms have created joint ventures with local or national mortgage lenders, financial institutions, or mortgage subsidiaries of financial holding companies, title underwriters, or title agencies that are jointly owned (e.g., 50%-50%) by the partners.

- That 64% of home buyers who recently used one stop shopping programs had a much better overall experience with their home purchase transaction.

- That over 90% of home buyers who did not use one stop shopping programs believed that if they had used one, they would have had a better overall home purchase experience because:

  - They would have had just one person to contact,
  - They would have saved money if the company offered discounted prices
  - It would have sped up the home buying process,
  - It would have prevented things from falling through the cracks; and
  - It would have assured one standard level of brand-named service from all providers of the home purchase services. [4]

The Edwards study I mentioned earlier found that mortgages offered by realty-based one stop shopping programs are competitive in both price and service. It concluded that real estate agents prefer using outside lenders unless the in-house mortgage service is exceptional, and that they only recommend the in-house product to the home buyer when the loan product is within 1/8th of a percent of the best rate and when he or she believes the service is superior to outside mortgage products. The Edwards study also found that 96% of realty-owned mortgage brokerage operations use multi-lender systems, in order to give their real estate sales force and their customers a choice of mortgage lenders.

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4 The survey also asked home buyers how they felt about financial institutions entering the real estate brokerage business. 69% believed it would positively affect the range of services available through one company, 47% believed it would positively impact the number of choices of companies to conduct their home purchase transaction, and 46% believed it would positively affect the price they paid for services needed to conduct the home purchase transaction

A 1994 economic study commissioned by RESPRO® and conducted by Lexecon, Inc., a national economic consulting firm, also found that realty-based one stop shopping programs potentially offer lower costs.[5] The study compared title and closing costs between realty-owned title companies and independent title companies in over 1000 home purchase transactions throughout seven states -- Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania and California—and concluded that title and closing costs for realty-owned title companies were not only competitive with those of independent title companies, but actually resulted in a 2% cost savings.[6]

The bottom line is that every consumer survey and empirical study to date has shown that home buyers prefer and potentially benefit from realty-based one-stop shopping programs.

IV. Integrated Real Estate Brokerage Companies Favor Open Competition

As you know, the banking industry has argued that financial holding companies and national bank subsidiaries should be able to compete with integrated real estate firms such as Long and Foster Real Estate and other RESPRO® members. In addition, some participants in this debate have accused the real estate brokerage industry as being "hypocritical" by wanting to be in the financial services business without letting financial institutions compete with us in the real estate brokerage business.

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5 "Economic Analysis of Restrictions on Diversified Real Estate Services Providers", by Lexecon, Inc., January 3, 1995.

6 In a 1996 Economic Analysis accompanying a final RESPA regulation, the Department of Housing and Urban Development (HUD) offered its independent analysis of both the Lexecon, Inc. study and the Edwards study. It concluded that "...referral activity among affiliates might still benefit consumers because of the possibility of immediate savings in shopping time and hassle and future reductions in prices due to lower marketing and other costs. Taking these benefits into account, referrals among affiliated firms are probably neutral and possibly beneficial to consumers."

I can assure you that Long and Foster Real Estate and the majority of RESPRO® members favor open competition and believe that banks should be able to compete with us in our primary business in the same way we compete with them in the mortgage and other settlement service businesses.

Over the last 20 years, a number of financial conglomerates have entered the real estate brokerage business, with varying degrees of success. In the 1980s and early 1990s, Sears Roebuck owned Coldwell Banker, Metropolitan Life owned Century 21, and Merrill Lynch owned Merrill Lynch Realty. Today, General Motors Acceptance Corporation (GMAC) owns GMAC Real Estate, Prudential Insurance Company owns Prudential Realty, Cendant Corporation operates the Century 21, ERA and Coldwell Banker franchises, and Warren Buffet's Berkshire Hathaway owns Home Services of America, Inc.

Initially, these companies appeared to have significant competitive advantages over traditional real estate brokerage companies, such as national distribution outlets, consumer marketing lists that make it easy to reach everyone, valuable data about buying habits, and tremendous name recognition. Sears even had access to federally insured deposits through its affiliate Sears Savings Bank.

Their entry into the business real estate brokerage business concerned many independent real estate brokerage firms at the time. In fact, in 1981, the long range planning committee of a national network of large regional independent brokerage firms issued a report to its members that stated that Merrill Lynch and Sears were the two greatest threats to the solvency of real estate brokerage firms ever faced by the industry.

But this prediction was unfounded. Sears, Merrill Lynch, and Metropolitan Life have since left the real estate brokerage business. While Prudential, GMAC, Cendant, and Berkshire Hathaway remain competitors, their presence in the real estate marketplace has not changed the basic character of the real estate brokerage business. In fact, we

believe that their entry contributed to the development of a wider range of services and caused traditional real estate brokerage firms to become more efficient and more consumer-focused than they were before.

Federally-insured financial institutions also have entered residential real estate markets over the years. This is not surprising, since over 50% of financial institutions (state-chartered banks in 26 states, federal savings associations, and credit unions) can currently engage in real estate brokerage.

Metropolitan Financial Corporation owned Minneapolis-based Edina Realty from 1988 to 1995. Sears Savings Bank was affiliated with Coldwell Banker from 1990 to 1993. Twin Cities Federal (TCF) and Great Western at one time owned real estate brokerage firms. Savings institutions or state-chartered banks also acquired real estate brokerage firms in Connecticut, Pennsylvania, Delaware, Texas, New York and in Florida over the last several years. But over time, most of these financial institutions sold their real estate brokerage businesses and retreated from the marketplace.

V. There Should be A Level Playing Field Between Bank-Owned and Non-Bank Real Estate Brokerage Firms Under RESPA and State Laws

While RESPRO® and The Realty Alliance support the ability of financial holding companies and national bank subsidiaries to enter the real estate brokerage business, we also believe that bank-owned and non-bank real estate brokerage firms should compete under a similar federal and state regulatory environment.

A. The Real Estate Settlement Procedures Act (RESPA)

At the federal level, all settlement service providers, including integrated real estate brokerage firms and our real estate agents, must comply with the Real Estate Settlement Procedures Act (RESPA), which requires that a lender give a Good Faith Estimate (GFE) of the closing costs three days after the application and a HUD-1

Settlement Statement at closing. Section 8 of RESPA also prohibits settlement service providers from giving or receiving referral fees, or "kickbacks".

Integrated real estate brokerage firms also are subject to RESPA's "affiliated business" restrictions, which requires us, before we refer business to our mortgage, title or other settlement service affiliates, to (1) disclose the nature of the financial relationship; (2) not require the use of the affiliated settlement service; and (3) not give or receive any referral fees that are otherwise prohibited under RESPA. Under the last requirement, neither a real estate brokerage firm nor its real estate sales associates can accept any "thing of value" from an affiliated mortgage or other settlement service provider for referrals of business.[7]

Financial holding companies and national bank subsidiaries that enter the real estate brokerage business would be subject to these RESPA guidelines, which we believe is appropriate.

Recently, HUD announced that it will publish a proposed RESPA rule that would exempt providers from Section 8 of RESPA if they guarantee the lump-sum cost of a settlement service "package".

For there to continue to be a level playing field between bank-owned and non-bank real estate brokerage firms, it is essential that HUD allow non-mortgage lenders such as real estate brokerage firms to offer a guaranteed "package" to our customers in

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[7] In addition, any mortgage, title, or other settlement service joint venture created by a real estate brokerage firm must comply with guidelines issued in a 1996 Department of Housing and Urban Development (HUD) Policy Statement that were intended to prevent "sham" joint ventures created primarily as a conduit for violating Section 8 of RESPA. Under these joint venture guidelines, HUD announced that it will look at a variety of factors to determine whether a joint venture is a "sham" or a legitimate joint venture, including whether both partners invest capital in the entity, whether the entity performs "core" settlement services, whether the entity has separate management and employees, and whether the partners' return on their ownership interest is proportional to the capital they invested in the joint venture entity.

the same manner as mortgage lenders. We hope that Congress will closely monitor the progress of this HUD rulemaking proceeding to assure that *all* providers have the ability to compete under any new regulatory environment under RESPA, regardless of their industry or affiliation.

B. State Laws Affecting Integrated Real Estate Brokerage Firms

Integrated residential real estate brokerage firms also are subject to a myriad of state laws and regulations that prohibit or restrict their operations.

In 2001, 37 states had statutes, regulations, or policies that place percentage limitations on the amount of business a title insurer or agent can receive from an affiliate, including an affiliated real estate broker, real estate agent, home builder, mortgage lender, or financial institution.[8] Other states have enacted laws that prohibit a person from receiving a fee as real estate broker or salesperson and mortgage broker in the same transaction.

As you know, the Gramm-Leach-Bliley Act (GLBA) prohibited states from (1) preventing a depository institution or affiliate from being affiliated with any entity authorized by the Act; (2) preventing or significantly interfering with the ability of a depository institution or affiliate to engage in insurance sales, solicitation or cross-marketing; or (3) preventing or significantly interfering with the ability of an insurer or affiliate to become a financial holding company or to acquire control of a depository institution.

Since GLBA passed Congress, some financial institutions have successfully exempted themselves from these state restrictions under GLBA's state preemption provisions. For example, the Kansas Insurance Department ruled in 2001 that GLBA

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8 "State Survey of Affiliated Business Laws", by the Real Estate Services Providers Council, Inc. (RESPRO®), 2001.

preempted Kansas financial institutions *only* from a Kansas state law that prohibited a title agency from receiving in excess of 20% of its operating revenue from an affiliate.

As a result, Kansas financial institutions may own a title company but non-financial institutions, including real estate brokerage firms, may not. If financial holding companies and national bank subsidiaries are allowed to own real estate brokerage firms, then bank-owned real estate brokerage firms could own title agencies but non-bank real estate brokerage firms could not.

RESPRO® has consistently opposed these state anti-affiliation laws over the years, and we support their preemption or repeal for both financial institutions and non-financial institutions. If the Fed and Treasury approve a final rule, we urge Congress to assure that state laws apply equally to all real estate brokerage firms, regardless of their affiliation. This would better enable all real estate brokerage firms to offer home buyers the benefits of one-stop shopping programs, regardless of whether they are affiliated with a financial institution.

Mr. Chairman, I again thank you for the opportunity to testify, and I would be glad to answer any questions.

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Effective July 22, 2002

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Atlanta, Georgia
MRIS
Rockville, MD
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Aspinwall, Pennsylvania
National Real Estate Information Svcs.
Pittsburgh, PA
The New York Mortgage Company, LLC
New York, NY
North Coast Mortgage Company
Larkspur, CA
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Allison Park, Pennsylvania
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Santa Ana, California
Pacific Alaska Mortgage
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PCFS Mortgage Resources, LLC
Atlanta, GA
Personal Lines Insurance Brokerage, Inc.
Warren, New Jersey
Preferred Empire Mortgage Company
Melville, New York
Preferred Title
Madison, Wisconsin
Premier Title Company, LLC
Palm Beach, Florida
Professional Home Mortgage Lenders
Winston-Salem, North Carolina
Prudential Gardner, Inc.
Metairie, Louisiana
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Pittsburgh, Pennsylvania
Realty Executives of Tucson
Tucson, Arizona
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Birmingham, Alabama
RELO
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Virginia Beach, Virginia
ReMax International Relocation Services, Inc.
Englewood, Colorado
RE/MAX One
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Realink.com
Tempe, Arizona
Realty Title Agency, Inc.
White Plains, New York
Relocation Resources International, Inc.
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Virginia Beach, VA
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SHEA Mortgage, Inc
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Shorewest Realtors
Brookfield, Wisconsin
Surety Title Corporation
Marlton, New Jersey
Southern Title Insurance Corp.
Richmond, Virginia
Starck & Co., Realtors
Palatine, IL
Strategic Title Agency, LLC
New York, NY
Title America Service, Inc.
Columbia, Maryland
Title Clearance Services, Inc.
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CONSUMER PERSPECTIVES ON REALTY-BASED ONE-STOP SHOPPING

April 2002

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PURPOSE OF THE STUDY

The purpose of the study was to extend the learning gained in the study on consumer and agent perspectives in residential real estate entitled *"Room For Improvement: Perspective of Real Estate Consumers and the Professionals Who Serve Them"*, released in February of this year to understand more specifically the home buying consumers response to one stop shopping. This study was to address:

- Overall concept response
- Appropriate sources for one stop shopping
- Impacts on consumer behavior and a satisfaction in the purchasing process

As a secondary purpose, the study was intended to identify any change in perceptions by home buying consumers that might have occurred since the National Association of Realtors study of 1999, which addressed many of the same issues. To aid in comparability, exact wording of several questions from that study were used, as were the rating scales. That survey was conducted from July 25 to 30, 1999 by Hart-Riehle-Hartwig Research and was based on 801 homebuyers nationwide who purchased their homes within the past two years.

RESPONDENT PROFILES

This survey was conducted from March 18th to 25th, 2002 by Harris Interactive, the parent company of the Harris Poll. A total of 2052 recent and future homebuyers were interviewed, including 687 Recent Buyers and 1365 Future Buyers. To be qualified, the buyers had to have purchased their home within the past 12 months, or to be planning on purchasing a home in the next 12 months. 76% of the recent buyer groups used a real estate agent, and 23 % did not use an agent.

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FINDINGS FROM THE SURVEY – SUMMARY

I. SERVICES TO THE TRANSACTION: USE AND PROVIDERS

Most of the buyers used or planned to use many of the services traditionally seen as important to the real estate transaction.

Which of the following did you use the last time you purchased a home. (Or which do you plan to use when you purchase your home) Please check all that apply.

Service	Total Buyers	Recent Buyers	Future Buyers
Real Estate Agents	**76%**	**71%**	**79%**
Mortgage Lending	**80**	**83**	**79**
Title Insurance	**56**	**58**	**56**
Homeowners Insurance	**86**	**78**	**90**
Home Inspection	**70**	**58**	**76**
Home Warranty	**41**	**32**	**45**

Most buyers continue to obtain the required services for the transaction from multiple sources versus a single source. Future Buyers expect that they will do the same.

Did you get the services that you required (e.g. real estate agent, mortgage lending, title insurance, homeowners insurance, home inspection, home warranty, etc) from one source or multiple sources? In the case of Future Buyers, worded as do you think you will get the services you will require…?

	Total Buyers	Recent Buyers	Future Buyers
One Source	21%	20%	22%
Multiple Sources	79	80	78

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Real estate agents have a significant impact on the service providers used by their home-buying clients. Real estate agents frequently provide recommendations to buyers on where to obtain many of the services needed during the transaction, and when offered a recommendation, most buyers follow the recommendation.

Please indicate whether the real estate agent who handled your recent home purchase offered a recommendation on where you could obtain the following services. (Base: Respondents who used a real estate agent and were recent buyers only – 471 respondents)

	Agent provided recommendation	Agent didn't provide recommendation	Not Sure
Home Inspector	72%	21%	7%
Title Insurance	60	29	11
Home Warranty	47	35	18
Mortgage Lender	66	29	5
Homeowners Insurance	32	64	4

Did you use the service (s) recommended by your agent? (Base: Respondents whose agents offered the services listed)

	Used Recommended Service Provider	Used Service Not Recommended by Agent	Did Not Use
Home Inspector	83	6	12
Title Insurance	82	8	10
Home Warranty	72	2	26
Mortgage Lender	77	17	6
Homeowners Insurance	68	24	7

It appears however that either few real estate brokerage companies offer the services, or that real estate agents are not recommending the services of their real estate brokerage company (if offered), because few of the services offered by the real estate agents were from the agent's brokerage company. This is supported by the high percent of buyers who were unsure of whether the agent's brokerage company offered a full range of services or not. Where the buyer was aware, they were almost equally likely to learn about it before contacting an agent as to learn after contacting the agent.

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Which of the services that were offered to you by your real estate agent were from the real estate brokerage company for whom the agent worked?

	% from real estate brokerage company
Home Inspector	8%
Title Insurance	11
Home Warranty	9
Mortgage Lender	13
Homeowners Insurance	6
None of these	57
Not Sure	15

Did your real estate agent's brokerage firm offer a full range of home buying services (for example: home inspection, title insurance, home warranty, mortgage lending, etc.)? Base: respondents that used real estate agent and was recent buyer –471 respondents)

Yes	30%
No	42
Not Sure	28

Were you aware that your real estate agent was affiliated with a real estate brokerage that offered a full range of home buying services prior to engaging your real estate agent, or were you made aware after selecting an agent? (Base: respondents whose real estate brokerage firm offered a full range of services – 141 respondents)

Was aware prior to engaging an agent	44%
Was made aware after selecting an agent	38
Not Sure	12

It is interesting to note that when a buyer was aware that the real estate brokerage offered this full range of services, in 44% of the cases, it had a positive impact on the selection of a real estate agent.

Did the fact that the real estate brokerage offered this full range of services have no impact, a positive impact or a negative impact on your selection of a real estate agent?

(Base: respondents who were aware prior to contacting a real estate agent – 62 respondents)[1]

No Impact	56%
Positive Impact	44%
Negative Impact	0

[1] Please note that when sample sizes get small, care should be taken in assuming predictability of the results.

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II. ONE STOP SHOPPING CONCEPT RESPONSE

When offered the option of a simplified one stop shopping process where all services required for the transaction were provided through one source, consumers clearly indicated a strong preference for this option. 82% of all buyers would strongly or somewhat consider using this type of one stop shopping service, with almost 50% (47%) indicating a high degree (strongly consider) of willingness to consider this process.

If a company offered to set up a simplified, one-stop shopping process for you, in which they provided all required services, how strongly would you consider this process? (Base: All Respondents)

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total[2]	82%	77%	85%
Consider Strongly	47	41	49
Consider Somewhat	36	36	36
Bottom 2 Box – Total	16	21	13
Consider a Little	12	14	11
Would Not Consider	3	6	2
Not Sure	2	2	2

This is a significant increase from the total levels of acceptance found in the NAR Survey of 1999, when 58% of buyers were interested in one stop shopping. Not only has total interest increased, but the strength of the buyer's interest as indicated by "consider strongly" has risen by 29 points, and the buyers not willing to consider one stop shopping at all has dropped 18 points to a minimal 3%.

	NAR Survey 1999	Murray Survey 2002
Top 2 Box	58	82
Consider Strongly	18	47
Consider Somewhat	40	36
Bottom 2 Box	39	16
Consider a Little	17	12
Would Not Consider	22	3
Not Sure	3	2

[2] The Top 2 Box notation represents a combination of the responses for Consider Strongly and Consider Somewhat – the top 2 responses. Bottom 2 Box represents the total of the lower two responses – Consider A Little and Would Not Consider

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Among the types of companies that the buyer would consider using for this one stop shopping process, mortgage companies, banks/credit unions and real estate companies were all regarded very favorably, without a huge preference for one type company over the other, although a directional preference appeared to exist for a mortgage company. Insurance companies, tax preparation companies and credit card companies had much lower acceptance from buyers as a source of one stop shopping service.

*How strongly would you consider using this kind of company for one stop shopping for purchasing a home – **A Mortgage Lender or Mortgage Provider?***
(Base: all respondents)

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	76%	72%	78%
Consider Strongly	35	37	35
Consider Somewhat	40	35	43
Bottom 2 Box – Total	23	26	21
Consider a Little	17	19	16
Would Not Consider	6	7	5
Not Sure	2	3	1

A Bank or Credit Union?

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	74%	68%	77%
Consider Strongly	34	31	35
Consider Somewhat	40	37	42
Bottom 2 Box – Total	25	29	22
Consider a Little	17	20	16
Would Not Consider	7	10	6
Not Sure	2	3	1

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A Real Estate Brokerage Company?

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	71%	66%	73%
Consider Strongly	32	30	34
Consider Somewhat	38	36	40
Bottom 2 Box – Total	27	32	24
Consider a Little	20	21	19
Would Not Consider	7	11	5
Not Sure	2	2	2

An Insurance Company?

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	44%	36%	48%
Consider Strongly	13	12	13
Consider Somewhat	31	24	35
Bottom 2 Box – Total	51	59	46
Consider a Little	30	34	28
Would Not Consider	21	25	18
Not Sure	5	4	6

A Tax Preparation Company like H&R Block?

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	16%	14%	16%
Consider Strongly	4	4	3
Consider Somewhat	12	10	13
Bottom 2 Box – Total	78	81	76
Consider a Little	25	24	26
Would Not Consider	52	57	50
Not Sure	7	5	8

A Credit Card Company?

	Total Buyer	Recent Buyer	Future Buyer
Top 2 Box – Total	10%	11%	10%
Consider Strongly	3	3	3
Consider Somewhat	7	8	7
Bottom 2 Box – Total	82	84	82
Consider a Little	22	21	22
Would Not Consider	60	62	59
Not Sure	7	6	8

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Similar to the finding of increased interest in the concept of one stop shopping since the NAR study done in 1999, the *acceptance of all three major sources has also increased.* Mortgage Companies, and Banks gained almost 10 points of acceptance each, while Real Estate Brokerage Companies gained 8 points.

	Top 2 Box		Bottom 2 Box	
	1999	**2002**	**1999**	**2002**
Mortgage Company	66%	76%	33%	23%
Banks or Credit Unions	64	74	35	25
Real Estate Companies	63	71	36	27
Insurance Company	39	44	60	51
Tax Preparation Company	24	16	75	78
A Credit Card Company	10	10	89	82

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III. IMPACT OF ONE STOP SHOPPING ON BUYER BEHAVIOR AND SATISFACTION

The survey attempted to look at existing and potential behavior impacts from one stop shopping, using a mortgage company as an example. When buyers applied for a mortgage prior to contacting an agent, they were only infrequently offered a variety of other services (with the exception of closing service like title insurance).

Did you apply for a mortgage prior to contacting a real estate agent? (Base: Respondents that used a real estate agent and is a recent buyer – 471 respondents)

Yes	34%
No	66%

Which, if any, of the following services did your mortgage company offer you? (Base: respondents who were recent buyers who applied for a mortgage prior to contacting an agent – 159 respondents).

Selection of real estate agent	23%
Homeowners insurance	33
Closing services (i.e. Title Insurance, etc.)	70
Home Warranty	19
Home Inspectors	23
None of These	21

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This seems unfortunate, because for at least 47% of buyers, if mortgage companies, banks or other lenders have services such as real estate agents, insurance, and closing services, the buyers would prefer to work with that company. For those that said it would have no impact, it would not be to avoid the company, but rather to choose which services to use. In only 10% of the cases would there be a negative impact on the buyer's perception of the company.

If a mortgage company (or bank, other lender, etc.) had services such as real estate agent selection, homeowner's insurance, and closing services like title insurance available, would it affect your choice of which mortgage company to use? (Base: all respondents)

	Total Buyers	Recent Buyers	Future Buyers
Yes, if the mortgage company offered all of these services, I would prefer that company	47%	40%	51%
Yes, if the mortgage company offered all of these services, I would stay away from that company because I only want to use a mortgage company for a mortgage.	5	3	6
No, even if the mortgage company offered all of these services, I would just use those services I want to use	43	49	40
No, if the mortgage company offered all of these service, I would think that they are trying to do too much and I would avoid that company	5	8	4

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Recent buyers were relatively satisfied with the overall experience of buying their last home, with few being completely unsatisfied. At 64% top 3 box (high levels of satisfaction) however, there is clearly room for improvement. This is especially true in mortgage lending and title insurance as well as homeowners insurance services.

Overall, how would you rate your satisfaction with the overall experience of buying your last home? (Base: recent buyers – 667 respondents). Scale of 0-10 where 10 is completely satisfied and 0 is not at all satisfied.

Top 3 Box[3] (8, 9, 10)	**64%**
Completely Satisfied – 10	21
9	14
8	29
Bottom 3 Box (0,1,2)	**4%**

How would you rate your experience with the service you received in each of the following areas? (Base: Recent Buyers – who used each service).
Scale of 0-10 where 10 is completely satisfied and 0 is not at all satisfied.

	Real Estate Agent	**Mortgage Lending**	**Title Insurance**	**Home Insurance**	**Home Inspection**	**Home Warranty**
Top 3 Box	72%	63%	64%	72%	63%	67%
10	39	24	25	34	27	28
9	15	18	13	18	16	15
8	19	21	26	20	20	23
Bottom 3 Box	4	8	4	4	5	4

[3] Top 3 Box here is a combination of the responses for levels 8, 9 and 10 on a scale from 0 to 10 where 0 is Not At All Satisfied, and 10 is Completely Satisfied. Bottom Three Box represents the combination of 0, 1 and 2 on that same scale.

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Interestingly, recent buyers who used one source for all the services required for the transaction had a much better overall experience, as well as more satisfactory experiences in virtually all the individual service areas.

Top 3 Box Scores for each service – All Recent Buyers vs. Recent Buyers Who Used One Source instead of Multiple Sources for required services:

	Recent Buyers	**Recent Buyers Who Used One Source**
Overall Experience	64%	71%
Real Estate Agent	72	72
Title Insurance	64	71
Mortgage Lending	63	67
Homeowners Insurance	72	78
Home Inspection	63	79

Among buyers who used multiple sources, one third thought they could have had a better experience if they had purchased all services through one source. Combined with the 20% of recent buyers who used a single source and indicated higher levels of satisfaction, more than 50% of recent buyers either believe they can or have received a better experience through one stop shopping.

Do you think that your real estate experience would have been more satisfactory experience is you could have purchased all the necessary services/products from one source? (Base: respondents using multiple sources).

Yes	34%
No	66%

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Among buyers who used multiple sources but believed they would have had a more satisfactory experience, virtually all of the benefits outlined had merit as reasons to believe they would have had a better overall home buying experience, including ease of the transaction, potential cost savings, speed, safety (prevent things from falling through the cracks), and the assurance of a standard level of service.

How much merit do the following reasons have for why you think you would have been more satisfied if all the needed services were available from one source. (Base; respondents who thought the experience would have been more satisfactory – 181 respondents)

	Easier process with just one person to contact	**Save money if companies offered discount prices**	**Speed up the home buying process**	**Prevent things from falling through cracks**	**Assures one standard level of brand-named service from all service suppliers**
Top 2 Box Total	99%	97%	99%	93%	91%
1-A great deal of merit	87	74	73	72	56
2- Some merit	11	22	26	21	34
Bottom 2 Box Total	1	3	1	7	8
3- Only a little merit	1	3	1	7	8
4- No merit at all	1	0	0	0	0
Not Sure	0	0	0	1	1

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IV. INFLUENCES IN CHOOSING REAL ESTATE FIRMS AND MORTGAGE COMPANIES

Among all respondents, there is general agreement about what is important in helping them make a selection of real estate firm or mortgage company. Referrals and existing relationships continue to dominate over brand or size and reputation of the company.

Overall, how important is each of the following in helping you make a selection of a real estate agent /brokerage firm? Scale of 0-10, where 0 is not at all important and "10"is extremely important. (Base: all respondents)

Total Buyers	Well known brand in my local area	Size and reputation of the company	Referral from a friend, assoc, or colleague	Existing relationship with broker/loan officer or salesperson
Top 3 Box (8,9,10)	35%	42%	55%	55%
Bottom 3 Box (0,1,2)	14	13	8	12

Overall, how important is each of the following in helping you make a selection of a mortgage company? Scale of 0-10, where 0 is not at all important and "10"is extremely important. (Base: all respondents)

Total Buyers	Well known brand in my local area	Size and Reputation of the company	Referral from a friend, assoc, or colleague	Existing relationship with agent
Top 3 Box (8,9,10)	35%	45%	52%	50%
Bottom 3 Box (0,1,2)	14	10	9	13

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V. IMPACT OF FINANCIAL INSTITUTIONS IN REAL ESTATE BROKERAGE

When asked about the potential impact on buyers of having financial institutions enter the real estate brokerage business, overall the response was positive, with 69% of buyers thinking that it would have a positive impact on the range of services available through one company, and 47% believing that it would have a positive impact on the number of choices to meet their needs.

If financial institutions, such as banks, were allowed to own real estate brokerage companies and offer real estate services, what is the impact you believe it would have on you, the customer, in your real estate transaction? (Base: all respondents).

1. **Range of services that are available to you through the company**

	All Buyers	Recent Buyers	Future Buyers
Positive Impact	69	65	71
Negative Impact	12	14	11
No Impact	19	21	18

2. **Price you pay for services required to conduct a real estate transaction**

	All Buyers	Recent Buyers	Future Buyers
Positive Impact	46	46	46
Negative Impact	39	36	40
No Impact	15	18	14

3. **The number of choices you have in companies to serve your real estate needs.**

	All Buyers	Recent Buyers	Future Buyers
Positive Impact	47	39	51
Negative Impact	31	33	30
No Impact	22	27	19

When looking at people who would strongly consider one stop shopping (those that would consider it strongly = 47% of all buyers), the perceived positive impact increased significantly.

Measure of positive impact of financial institutions entering real estate brokerage:

	All Buyers	Buyers Who Strongly Consider One Stop Shopping
Range of services from one company	69	79
Price you pay	46	55
Number of choices of companies	47	58

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VI. CONCLUSIONS

- Home buyers, both recent and future, have a very positive view toward one stop shopping and the benefits that can derive from being able to acquire all necessary services from one source. The benefits address the issues of simplicity and convenience: it's an easier process that can be conducted faster, with less room for error and with assurance that each service will be conduced with equal quality. The jury may be out somewhat on the issue of whether there might be an economic impact in terms of lowering overall cost, however, even in this case, most buyers think that there is a possibility of reduced costs from one stop shopping.

- Real estate agents continue to have an enormous impact on the mortgage and settlement service providers that the buyers use, and may not be communicating with their clients that services other than buying or selling are available through the agent's brokerage company. From previous work by Murray Consulting, this appears to come from a desire by the agent to use his or her own personal trusted resources and to protect the agent/buyer relationship from encroachment by his or her real estate brokerage firm.

- While still early in development, it appears that a real estate brokerage firm that has a full range of services may have a positive impact on a buyer's selection of agents.

- Mortgage companies, banks/credit unions and real estate companies are all seen as appropriate sources for one stop shopping in a residential real estate transaction. This comfort with a range of company types has increased significantly from when a previous study that was conducted by the National Association of Realtors in 1999, with mortgage companies building the strongest approval both overall, and in the "strongly consider" category. Buyers clearly have a comfort and trust level in certain types of institutions, and may be trading off what they perceive as the "expertise of the real estate industry" for existing relationships with their banking or other financial institutions.

- Having a one stop shopping process has positive impacts on the selection of company (mortgage company and agent), as well as positive impacts on the satisfaction of buyers in the overall process as well as the individual services. Buyers who have already experienced one stop shopping report much higher levels of satisfaction than those who have not. This would suggest that companies in these three industries who assemble, market and deliver one stop shopping can have a measurable advantage in serving the buying customer over those who don't.

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the contrary, they perceive that they can obtain benefits in one stop shopping and in the number of choices that they have in serving their needs. Additionally, they perceive there could be an opportunity for a positive impact on the total cost of the services required in the buying transaction.

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Statement
of

THE NATIONAL ASSOCIATION OF REALTORS®

and

THE NATIONAL AUCTIONEERS ASSOCIATION

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVE

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

PRESENTED
BY

MARTIN EDWARDS, JR.
PRESIDENT, NATIONAL ASSOCIATION OF REALTORS®
Partner, Colliers Wilkinson & Snowden Inc., Memphis, TN.

July 24, 2002

Chairman Bachus, Representative Waters and members of the subcommittee. Thank you for inviting the National Association of REALTORS® to testify at this hearing on H.R. 3424, the Community Choice In Real Estate Act. As you know, NAR and its 800,000 members strongly support this legislation, along with 246 cosponsors in the House, as a restatement of congressional intent that banking and commerce should remain separate. I hope this is a step toward enactment of the bill, and that this committee will seek input from the dozens of other consumer and business groups supporting H.R. 3424.

I am pleased to offer this testimony on behalf of the REALTORS® and the National Auctioneers Association whose 6400 members are responsible for real estate auction sales of $5 billion per year.

Mr. Chairman, in these precarious economic times, housing and the real estate industry are the shining light. In contrast, some of our country's largest corporate institutions are facing failure and bankruptcy due to accounting problems, cozy relationships and outright fraud. Ordinary Americans have seen their retirement accounts wither and their portfolios vanish, while corporate management has profited. The overall economy has been suffering and these events have helped to prolong this stagnation.

Fed Chairman Greenspan testified just last week that the continued strength of the housing and real estate sector are necessary elements to keep the economy on the right track. REALTORS® are proud of this accomplishment, and point to it as strong evidence that the current system is not only working, but flourishing. The current competitive environment in the real estate business has made it a bastion of our economy.

The housing and real estate sector of the U.S. economy is large and fulfills an important role in maintaining economic stability in our economy. The size of the housing market is immense: there are 115.9 million housing units in the United States according the 2000 Census. In 2001, 5.3 million existing homes were sold across the country. With the median price of an existing home in 2001 at $147,800, the economic value of homes sold is $783 billion.

The housing sector has an impact on the U.S. economy that goes beyond mere size. During the 2001 recession, housing has carried the economy through the recession. While profits declined and payrolls fell off, consumers had confidence in housing and bought homes in record numbers. Indeed from the fourth quarter of 2000 to the fourth quarter of 2001, the GDP grew only 0.48 percent and housing sector contributed 0.3 percent of that amount: 61 percent.

With the economy teetering on the edge of a recovery, now is not the time to disrupt the housing markets with policy changes that have not been carefully considered. Housing and homeownership play a role beyond the current home sales. The national homeownership rate is over 68 percent, but just as under represented groups are beginning to enter these markets, changing the rules could disrupt these gains. Confidence in the system used to buy and sell homes is critical to maintaining an efficient market that allows homebuyers to obtain a home at the best price.

The members of NAR believe the current separation of commerce and banking is a primary reason why this sector of our economy has remained strong. Many of the troubles being experienced by the current crop of corporate failures can be traced to the rapid expansion and

conglomeration of businesses. But surely, one of the stronger reasons was the rapid expansion and conglomeration of businesses. Congress has determined that when the lines of separation are breached, as in accounting and consulting, too many conflicts of interest arise.

NAR believes that is why commerce and banking should remain separate. Real estate brokerage, leasing and property management are purely commercial activities. The proposed rule fails to recognize this fact.

Bankers will argue that a central tenet of Gramm-Leach-Bliley was the section to grant new powers to banks. We disagree: the central tenet and purpose of Gramm-Leach-Bliley was for ***Congress*** to grant securities and insurance industry powers to financial holding company and national bank subsidiaries. It was only after clear indications were given to the real estate industry by Congress that real estate brokerage, leasing and property management would continue to be treated as commercial activities and therefore not subject to regulatory action, that the final hurdles to passage were removed. That is why the bankers' application to regulators to grant these powers so soon after passage of Gramm-Leach-Bliley came as somewhat surprising.

Gramm-Leach-Bliley authorized the regulators to grant banks expanded financial powers, not whole industries. Although bankers have argued this is the first test of Gramm-Leach-Bliley, in fact, there has already been a rule finalized to allow financial holding companies to act as "finders" bringing parties to a transaction together. It specifically excludes finder activities that require a real estate license. Another proposed rule would allow financial holding companies greater entry into electronic data processing and new technologies to assist in the delivery of existing bank products. These are what we believe Congress intended as "incidental" or "complementary powers."

Let us make this completely clear. ***Real estate companies do not offer banking services. Period.*** We do not take deposits, offer savings accounts, checking accounts, or certificates of deposit. Nor do we have deposit insurance or access to the federal discount window. We offer real estate brokerage, leasing, and property management services.

In addition, some real estate brokers also operate mortgage lending companies. It is in this area where real estate brokers and banks compete. This is no different than General Motors financing the purchase of its automobiles. And even the bankers will tell you that they far exceed any other provider in mortgage originations. In fact, close to forty-five percent of mortgage originations are from commercial banks. The next highest group only originates half of that amount, and REALTOR® affiliated mortgage originations account for about five percent.

These are very specialized relationships governed by the Affiliated Business Arrangement provisions of the Real Estate Settlement Procedures Act. That act requires very specific consumer disclosures and maintains an arm's length relationship between the affiliated providers. In fact, many of these affiliations are maintained between real estate brokers and mortgage companies owned by banks. For example, Wells Fargo Mortgage and Long and Foster REALTORS® jointly formed Prosperity Mortgage Company. This company provides mortgage services to its customers and the affiliated companies share in the profits of that entity.

So why do the bankers seek this rule? Although they argue that local regulation would of course be followed, the bankers' actions speak louder than their words. Maybe we can look to the

experience of the insurance industry since enactment of Gramm-Leach-Bliley. There have been several instances of national banks, joined by their regulator, the Comptroller of the Currency (OCC), seeking preemption of state consumer protection and insurance laws. The State of Massachusetts has recently filed suit in the U.S. Court of Appeals against the OCC for preempting certain state laws on the sale of insurance by banks.

Despite Congress laying out ground rules to functionally regulate insurance and securities businesses under Gramm-Leach-Bliley, we still see problems and litigation. Even Chairman Oxley has questioned the OCC about the propriety of their actions. Surely, if such a highly debated and informed system as that enacted as part of Gramm-Leach-Bliley is failing to adequately address regulatory problems in the insurance sector, Congress should take a long hard look at how banks operating real estate brokers would be regulated.

Real estate is one of the most locally regulated industries in this country. There are state, county, town, and village ordinances. There are certain areas within these jurisdictions that are treated differently. For example, certain areas of Capitol Hill are subject to additional limitations by the Capitol Hill Preservation Board due to their location. There are far too many questions and hurdles that arise under the proposed rule to let them be decided by the banking regulators.

This rule would profoundly change the whole real estate industry. What bankers are seeking under the proposed rule is nothing short of nationalization of the real estate industry. Does Congress want the Federal Reserve Board, Treasury Department, and Federal Trade Commission to be the regulators of local land matters? If so, Congress should enact legislation to accomplish this goal. By declaring real estate brokerage, leasing and property management financial in nature or incidental powers, the regulators would do just that. Yes, bankers will argue that they only seek to enter the market to be competitive, while abiding by all local real estate regulation. But their actions show a different approach that is sanctioned by their regulators on the federal level.

It is too soon after enactment of Gramm-Leach-Bliley to further expand bank powers into whole new industries. Treasury's own study, required by the Gramm-Leach-Bliley Act, showed that it was too early to assess the impact of cross-industry mergers among banks, insurance companies, and securities firms on access to loan and bank products for low- and moderate-income communities.[1] How can Congress allow the regulators to grant new commercial businesses to banks when they haven't developed any study on the impact of existing expansions?

[1] Robert E. Litan, Nicholas P. Retsinas, *et al.* for the Department of the Treasury, *The Community Reinvestment Act After Financial Modernization: A Final Report* (January 2001).

Well over a year ago, the Federal Reserve and the Treasury Department issued a proposed rule that would allow financial holding companies (FHCs) and financial subsidiaries of national banks to engage in real estate brokerage, leasing, and property management activities. The NATIONAL ASSOCIATION OF REALTORS® (NAR) strongly opposed this regulation on the grounds that real estate brokerage and property management are not financial activities, nor are they incidental to finance, and approval of the proposed rule would thus effect a mixing of banking and commerce. This regulation would not only result in negative market and consumer consequences. An affirmative decision by the Federal Reserve and Treasury on this proposal would also violate Congressional intent, evident in several key banking laws which make it very clear that Congress specifically intended to maintain the separation of banking and commerce.

Congress adopted the Gramm-Leach-Bliley Act in 1999, which established a legal and regulatory framework for financial subsidiaries of banks and financial holding companies to engage in designated financial activities under the new law. The Act created a new entity, the financial holding company that would compete in the financial services area offering services that were prohibited to bank holding companies. By distinguishing the permissible activities of bank holding companies from financial holding companies, the Act also reaffirmed the longstanding national policy that separated banking from commerce because of the unique powers and advantages granted to banking institutions by their federal charters.

NAR-supported legislation was introduced in both the U.S. House of Representatives and the U.S. Senate (H.R. 3424 and S.1839) that will clarify Congressional intent that real estate brokerage and management are not incidental or complimentary to a financial activity. The proposed legislation, *The Community Choice in Real Estate Act,* will maintain the status quo regarding FHCs ability to expand into real estate brokerage and property management activities through regulation. *The Community Choice in Real Estate Act* returns the issue to its proper forum – the U.S. Congress.

The NATIONAL ASSOCIATION OF REALTORS®-supported legislation and its position on this issue is based primarily on two strong beliefs:

1. The Congress, *not* the Board of Governors of the Federal Reserve or the Secretary of the Treasury, is the proper judge of what is commerce and what is banking or financial services. The 535 elected Congressional representatives, not the seven Federal Reserve Board Governors or the Secretary of the Treasury, should be responsible for any changes in current law that would result in a dramatic restructuring of the real estate industry. Real estate brokerage and property management are clearly *commercial activities.* This view was central throughout the 25-year debate on the Glass-Steagall Act and the passage of the Gramm-Leach-Bliley Act of 1999, and clearly is reflected in historical and present Congressional intent.

2. Permitting financial holding companies and national bank subsidiaries to enter the real estate brokerage and management industry would have wide-ranging, adverse market effects. Industry concentration would increase, competition would decline, and consumer choice would be limited with no real benefits from economies of scale or scope. The unprecedented expansion of banking powers into the real estate brokerage/management

> industry would clearly expose the financial holding companies' and their banking subsidiaries' inherent conflicts of interest in selling financial services (banking products) rather than serving customers in the brokering of real estate property.

NAR's position was eloquently stated by Congressman Jim Leach of Iowa, the sponsor of the Gramm-Leach-Bliley Act:

> *"The movement to go beyond the integration of financial services and eliminate the traditional legal barriers between commerce and banking is simply a bridge we should not cross. It is a course fraught with risk and devoid of benefit and one for which there is no justification.*
>
> *Such a step would open the door to a vast restructuring of the American economy and an abandonment of the traditional role of banks as impartial providers of credit, while exposing the taxpayer to liabilities on a scale far exceeding the savings and loan bailout. At issue with financial services modernization is increased competition. At issue with mixing commerce and banking is economic conglomeration, the concentration of ownership of corporate America."*

Financial holding companies, their representative associations and other groups, including some large real estate brokerage companies, argue against the NATIONAL ASSOCIATION OF REALTORS® position. They claim that the Association is being "protectionist," and that the entry of banks into real estate would encourage more open competition in the real estate marketplace. On the contrary, the NATIONAL ASSOCIATION OF REALTORS® position promotes open and fair competition. Indeed, its members would welcome FHCs as competitors if FHCs truly competed in a free market without the advantages of their bank subsidiaries' federal charters and without creating the risks outlined by Chairman Leach.

Currently we have a balanced marketplace for commerce, banking and financial services. Real estate brokerage firms do not engage in banking. Financial holding companies do not engage in commercial activities, such as real estate brokerage and property management. Banking and commerce are separate. The arena of financial services allows competition from both financial holding companies *and* commercial firms. Both real estate brokerages and financial holding companies (banks) have diversified their business lines into financial services that have served as a buffer between commerce and banking activities. This was the intent of Congress throughout its deliberations on financial modernization.

The reality is that the entry of federally chartered banks or financial holding companies into the real estate brokerage business would tilt this balanced marketplace toward the FHCs. It would pit government-subsidized banking companies (putting taxpayer money at risk) against privately funded real estate enterprises. Furthermore, if FHCs are permitted to enter the real estate business, REALTORS® and builders would be placed in the awkward position of having to go to banks which are subsidiaries of FHCs – their direct competitors – for loans and financial services.

The Community Choice in Real Estate Act of 2001 was introduced by Congressmen Ken Calvert of California and Paul Kanjorski of Pennsylvania. The Act, H.R. 3424 was introduced with more than 30 original cosponsors and today has more than 245 co-sponsors. The legislation, along with its companion bill in the Senate, S.1839, is designed to address concerns expressed by both real estate professionals and consumers if financial holding companies and subsidiaries of national banks (FHCs) are permitted to engage in real estate brokerage and property management activities.

In brief, The Community Choice in Real Estate Act stipulates that federal regulators prohibit these financial institutions from engaging in real estate brokerage and management activities. More specifically, H.R. 3424 and S.1839 specify that the Federal Reserve Board and the Secretary of the Treasury may not determine that real estate brokerage or real estate management activities are financial in nature, incidental to any financial activity, or complementary to a financial activity.

THE COMMUNITY CHOICE IN REAL ESTATE ACT
RETURNS THE ISSUE TO THE PROPER FORUM – THE U.S. CONGRESS

The NATIONAL ASSOCIATION OF REALTORS® position on banks entering the real estate business aligns with both historical and current Congressional intent. The legislative history of banking laws demonstrates that real estate brokerage has been consistently interpreted as a commercial, not a financial activity. Although the Gramm-Leach-Bliley Act of 1999 (GLB) made specific reforms in the nation's banking and financial services laws, the separation of banking from commerce remains a tenet of national policy. And while the Federal Reserve and the Secretary of the Treasury are authorized by Gramm-Leach-Bliley to expand the list of financial activities, Congress has clearly indicated its intent to maintain the separation of banking and commerce.

Financial modernization – the term that advocates used to characterize the legal changes that allowed banks, securities firms and insurance companies to enter each other's businesses – has been interpreted by some as removing all barriers to banks entering non-banking businesses. But in its deliberations on the Gramm-Leach-Bliley Act, Congress stopped short of mixing banking and commerce. The GLB Act was quite specific from the outset in describing what a financial activity may be. The current activities of banks and financial holding companies principally relate to financial instruments: loans, checking accounts, mortgages, etc. While these represent value between two parties (usually a bank and a depositor or borrower), they are not tangible goods and rarely take any physical form.

Commercial activities, such as real estate brokerage and property management, offer to consumers something that is tangible – a house, an appliance, a car, for example. Although banks argue that real estate has financial attributes, even the Federal Reserve Board and the Secretary of the Treasury in the proposed real estate regulation observed that bank-ascribed financial attributes might not be enough to treat real estate as a financial asset.[2] And while purchasing tangible assets, such as a car, computer, or a home, may entail the use of financial instruments – usually cash or loans – this does not mean that commerce is "financial in nature" or "incidental

[2] See Federal Register, Vol.66, No.2, Wednesday, January 3, 2001, p.310.

to a financial activity." Rather, it can be argued that financial activity *is incidental to the real estate transaction.*

In the GLB Act, Congress enumerated those activities that it deemed to be financial in nature, but *specifically omitted real estate brokerage and management.* (For specifics, see 12 *U.S.C. 1843 (k)(4)*).[3] Congress did make provisions to expand the list of financial activities. It devised specific criteria that such activities must meet, based on new technological developments to deliver financial products to consumers and how the marketplace itself evolved. Congress also authorized the Federal Reserve Board and the Treasury Department to agree on such new financial activities.

However, Congress did not anticipate nor intend for that list of financial activities to include commercial ones. There has been no significant change in the relevant technology, or in the business of real estate brokerage or management, since enactment of the GLB Act in late 1999. The businesses of real estate brokerage and management remain, for all practical intents and purposes, the same today as they were on the date of enactment: the transfer of real property and such commercial activities related to such transactions. The very purpose of the regulation proposed by the Federal Reserve and the Treasury Department is to overturn the long-held understanding that real estate is commerce by re-designating it as a financial activity for purposes of the Gramm-Leach-Bliley Act. The proposal from the Federal Reserve and the Secretary of the Treasury runs counter to Congressional intent.

The proposal to redefine real estate brokerage as a financial activity has met opposition from a full spectrum of consumer and industry groups. In support of that opposition, Congress is reasserting its authority in the arena by introducing *The Community Choice in Real Estate Act.* This bill amends the Bank Holding Company Act to preclude any such action by the Federal Reserve or Treasury, and clarifies Congressional intent by prohibiting banks and financial holding companies from entering real estate brokerage or property management. The bill's intent is to maintain the status quo; it does not seek to preclude any current activities that banks and their affiliated businesses are authorized to do. It reasserts Congressional intent in maintaining the separation of banking and commerce.

Members of Congress overwhelmingly are signaling their support for retaining the commercial distinction of real estate activities and their intention to maintain the separation of banking and commerce. In fewer than five months after *The Community Choice in Real Estate Act* was introduced in Congress, more than 225 members of the House of Representatives and at least 10 members of the Senate signed on as co-sponsors of the bills.

THE ACT SUPPORTS A DIVERSIFIED REAL ESTATE SERVICES MARKETPLACE

During the past two decades, the financial services marketplace has grown substantially due, in part, to the entry of both commercial firms and banking companies. Commercial firms that are

[3] Further evidence of Congressional intent regarding holding company expansion into non-financial areas can be discerned by the vote in the House of Representatives in 1998 in which an effort to permit banks to engage in commerce – up to five percent of their annual net revenue and five percent of their total assets – was defeated by a vote of 229 to 193.

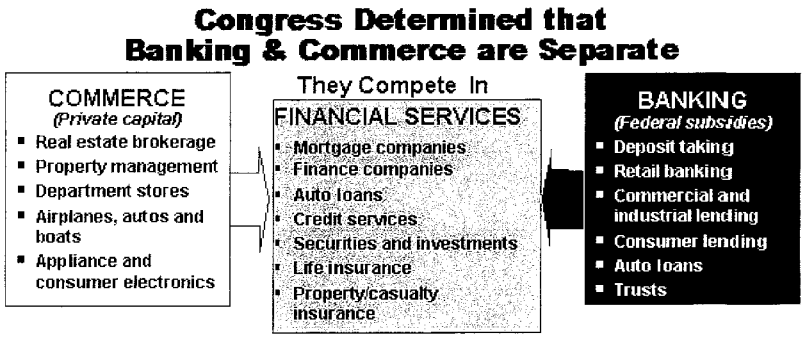
involved in the selling and/or brokering of durable goods (such as refrigerators, automobiles and homes) have naturally expanded into financial services to facilitate the transaction by offering consumer financing that is complementary to their primary service – the brokering/selling of a tangible product. Similarly, banking companies that are involved in the selling of banking services (such as consumer loans and commercial and industrial loans) have also expanded into financial services so that they can capture a greater market share by offering their customers financial services that complement their primary service – banking.

However, unlike a commercial firm, which risks its own capital funds, a bank's ability to expand its powers and diversify into financial activities has historically been constrained by Congressional oversight. Because of the "special nature" of banks and the many federal subsidies that flow through a bank (e.g., deposit insurance, privileged access to credit), Congress has continually repeated its intent to separate banking activities from commerce activities in an effort to avoid conflicts of interest, adverse market outcomes and fairness issues that can be caused by a bank's special privileges.

The Gramm-Leach-Bliley Act provided an opportunity for financial holding companies to expand their product/service lines into financial activities and activities that are incidental to finance. It is very clear that the GLB Act set the foundation for a shared competitive playing field for both commercial firms and banks—the financial services marketplace. Commercial firms that have subsidiaries involved in financial activities compete head on with bank-owned financial subsidiaries. This competition was not "created" by the GLB Act; it already existed because bank-affiliated mortgage lenders already existed and, in fact, dominated – and still dominate – mortgage originations. (In 1999, commercial banks and subsidiaries of commercial banks accounted for the largest market share – 44 percent – of mortgage originations, according to the Home Mortgage Disclosure Act. The top 25 diversified real estate brokerage firms accounted for only 0.8 percent of mortgage originations.) For example, the General Motors Acceptance Corporation (GMAC) – a financial services subsidiary of General Motors competes against Wells Fargo and other banks to sell financing services to customers purchasing a General Motors automobile. Similarly, Circuit City competes directly with Bank America to sell financing services to customers purchasing Circuit City- electronic products.

In the real estate marketplace, companies like John Doe, REALTOR®, compete directly with banks, like BankAmerica, in the financial services marketplace by providing real estate–related financial services – principally mortgage brokering services and title insurance – to customers purchasing a home that was brokered/sold by John Doe, REALTOR®. Both the real estate brokerage company and the bank offer a number of real estate related financial services to homebuyers and sellers.

In the post-GLB Act marketplace, the real estate brokerage company does not offer banking services and banks do not offer commercial services – real estate brokerage and management. The separation of banking and commercial activities is intact. The *competition is in the financial services arena where it belongs*. Consumers benefit from this arrangement because the direct competition for financial services between commercial companies and banks results in greater consumer choice and customer service. Prohibitions against the encroachment of federally subsidized banks into the world of commerce limit conflicts of interest or unfair competition.



The ability of real estate brokerage companies to diversify their business lines into the financial services marketplace has produced a number of diversified real estate services companies to better serve consumers. Even the smaller and less diversified real estate brokerage companies now look to offer ancillary services to their homebuying and selling clients. Moreover, there are examples where banks and real estate brokerage companies have joint ventured in the financial services marketplace. A prominent example is Prosperity Mortgage, which couples Wells Fargo Bank and Long and Foster, REALTORS®.

Diversified real estate brokerage companies compete directly against the large financial holding companies (banks) in the financial services marketplace each and every day. The competitive dynamics in this marketplace are no different from the competitive nature of the automobile and electronics marketplaces. The beneficiaries in all of these markets are consumers.

THE COMMUNITY CHOICE IN REAL ESTATE ACT WILL BENEFIT CONSUMERS AND THE REAL ESTATE INDUSTRY

The Community Choice in Real Estate Act will help to maintain a competitive, efficient, and balanced real estate marketplace, providing consumer choice at low cost and with no risk to the U.S. taxpayers. The entry of federally insured depository lending institutions into the real estate brokerage business would tilt the competitive playing field by pitting government–subsidized financial holding companies and national bank subsidiaries against privately funded real estate enterprises. Passage of the Act will help preserve a fiercely competitive real estate brokerage marketplace.

The real estate brokerage industry as it exists today has large numbers of independent real estate professionals and brokerages actively competing for prospective buyers and sellers. Competition is fierce, efficiencies are high, and there are relatively few barriers to entry. These characteristics make it highly unlikely that the proposed regulation would benefit either business or consumer interests.

The residential real estate brokerage industry is a competitive marketplace, where more three quarters of a million REALTORS®[4] and tens of thousands of real estate brokerages compete for customers' business each day. The underlying cost structure of the industry and the relative ease of entry into the market serve as checks to the concentration of market power. The large number of industry players ensures homebuyers and sellers access to service providers who best meet consumers' needs at the lowest price possible.

Real estate firms tend to compete actively for business in three different arenas. First, firms compete for the best real estate agents. Second, firms compete for sellers' listings and homebuyers against other real estate firms in their market area. Finally, real estate firms and agents compete against the other homebuying and selling options, including For Sale by Owner (FSBOs). The result of this three-pronged competition revenue and cost pressures that limit profitability for most real estate brokerages. But this competition also results in excellent service provided efficiently by real estate firms and agents for both buyers and sellers. *The Community Choice in Real Estate Act* would preserve this system.

MIXING BANKING AND COMMERCE WILL STIFLE COMPETITION IN THE REAL ESTATE INDUSTRY

Today any commercial firm can enter real estate brokerage, but FHCs have government-imposed barriers to entry. National banks and financial holding companies have long been able to own mortgage companies and engage in joint ventures with real estate firms. They now claim that real estate brokerage and management are financial activities, without acknowledging their current competition in this area through their existing mortgage lending affiliates. Financial holding companies now want to directly own commercial firms in the form of real estate firms and

[4] There are approximately two million people who hold real estate licenses. However, not all of those are active practitioners. It should be noted that REALTOR®, REALTORS®, and REALTOR-ASSOCIATE® are registered collective membership marks that identify, and may be used only by, real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to is strict Code of Ethics.

compete with other commercial firms using the federal subsidies available to their banking subsidiaries. This is not the sort of competition that Gramm-Leach-Bliley envisioned.

The expansion of banking powers that would permit FHCs to engage in real estate brokerage activities will have a detrimental effect on the real estate brokerage industry. The federal banking charter provides federal deposit insurance and privileged access to credit – advantages not offered to real estate brokerage firms. Most of the advantages of the bank charter directly add to bank profitability that would flow up to the financial holding company, thus offering FHCs and their real estate brokerage subsidiaries a competitive advantage over commercial firms in the real estate industry.

Allowing FHCs to provide brokerage, funding and investment services for real estate would increase the power of these integrated firms. This power could be used to limit the entry of new real estate firms and thus limit the competition characterizing the market today in two distinct ways.

First, FHCs would have the ability to fund new real estate brokerages with revenues from the banking side of the business, thus tilting the playing field towards FHCs. Financial holding companies would be able to use banking fees or even profits from their mortgage operations both to increase profitability and to subsidize their entry into insurance and other financial services. Few traditional real estate brokerages have access to outside income streams to subsidize the real estate brokerage business. The result could be an increase in industry concentration as real estate brokerages exit the industry unable to respond to their well-financed new competitors. The same dynamic would limit entry of new real estate firms.

Second, FHCs could leverage their privileged access to capital, access to numerous subsidiaries and outside income streams to engage in a sustained period of below-cost pricing designed to eliminate other firms providing the same service. This could damage any real estate brokerage firms that do not have the resources to defend themselves against a well-financed and subsidized FHC. Again, formerly viable real estate brokerages could be forced to dissolve – not because of an inability to provide efficient and quality service to consumers, but because below-cost pricing can unfairly eliminate the competition. The result could be a smaller number of firms that are less likely to provide the benefits that competition brings to today's real estate brokerage market.

MIXING BANKING AND COMMERCE HURTS CONSUMERS

The NATIONAL ASSOCIATION OF REALTORS® agrees with the message sent by the U.S. Congress: mixing commerce and banking will adversely affect the real estate industry. If big banks are allowed into the real estate business, the market could soon be dominated by a smattering of large banking conglomerates whose primary goal is to cross-sell various financial products, not to put people in homes and commercial properties. The end result could be fewer choices for consumers, higher fees and less competition.

In the banking industry a few dominant firms control a significant share of the total market. FHCs' entry into the real estate brokerage market would likely increase concentration and introduce unfair competition because of their federal subsidies. There is likely to be a significant decline in the number of firms and the number of small firms that represent a key segment of the

industry. The real estate brokerage business could change from a localized, highly competitive industry to one that is dominated by nationwide federally chartered firms.

It is unclear what FHCs could bring to the market that would increase competition. Any additional entry will not necessarily lower costs. FHCs claim that consumer costs will go down, but those lower costs can only be realized by introducing economies of scale or scope, cross-subsidization, or predatory pricing. The latter two reasons are not permanent benefits for consumers. Only the first – economies of scale – enhances consumer welfare. Without an increase in efficiency, there would be no cost savings to pass along to consumers. But there are limited economies of scale in the real estate brokerage industry.

Even if FHCs were able to reduce real estate brokerage fees temporarily, any savings to homebuyers would be offset by higher costs for bank customers. Absent economies of scale, lower real estate brokerage fees can only come via cross-subsidization from other business arenas. The higher banking fees are likely to become permanent features of the banking system, given barriers to entry and concentration of market power, while reductions in real estate brokerage fees could be temporary as firms exit the industry.

The expansion of banking powers that would permit financial holding companies into the real estate brokerage business could also limit consumer choice in the selection of a real estate professional and other real estate-related service providers. FHCs have an inherent conflict of interest in selling financial services (banking products) rather than serving customers in the brokering of real property. The parental relationship between FHCs and their subsidiary real estate brokerage business would likely steer consumers to the FHCs' subsidiaries. Agents working for an FHC-owned real estate brokerage firm would have less incentive to find an outside loan provider or other real estate settlement service vendor that best fits their customers' needs.

There is also the likelihood that FHCs entering the real estate brokerage industry would retain their real estate agents as salary-based employees, rather than as commission-based independent contractors. As FHC employees, these real estate agents would focus on the FHC's profits, cross-selling the holding company's other services. This is contrary to the current real estate market where there is fierce competition among a large number of firms ensuring that consumers receive valuable, *impartial* advice when they most need it.

THE ACT BENEFITS CONSUMERS AND THE REAL ESTATE INDUSTRY

In summary, passage of *The Community Choice in Real Estate Act* will ensure more competition, and thus more consumer choice. More competition will maintain the lowest cost real estate brokerage services as well as lower banking fees. Taxpayers will be protected from risks associated with commercial endeavors underwritten by federally insured depository lending institutions. Consumers will continue to be served by real estate professionals whose interests are aligned with theirs.

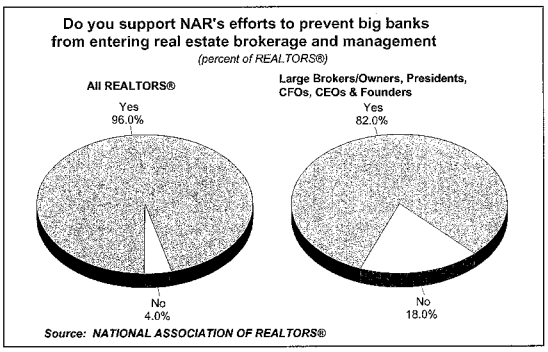
The Community Choice in Real Estate Act defines real estate brokerage and management as commercial activities, outside the scope of a federal bank charter. *The Community Choice in Real Estate Act* will limit banking institutions to activities permitted under their current charters,

and maintain the current environment that provides for an efficient and competitive real estate brokerage market that benefits both the real estate industry and America's consumers.

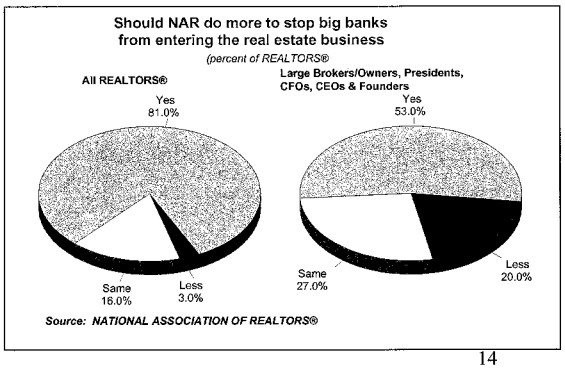
OVERWHELMING INDUSTRY SUPPORT FOR THE NATIONAL ASSOCIATION OF REALTORS® POSITION

The NATIONAL ASSOCIATION OF REALTORS® represents all of its members and the real estate industry as a whole. In the last 14 months, the Association has spoken for its 800,000 members with one voice, as *The Voice for Real Estate.* A unified voice is crucial in maintaining a competitive and highly efficient real estate industry that serves America's property owners. It is even more vital on the issue of allowing financial holding companies and national bank subsidiaries (FHCs) to engage in real estate brokerage and property management activities.

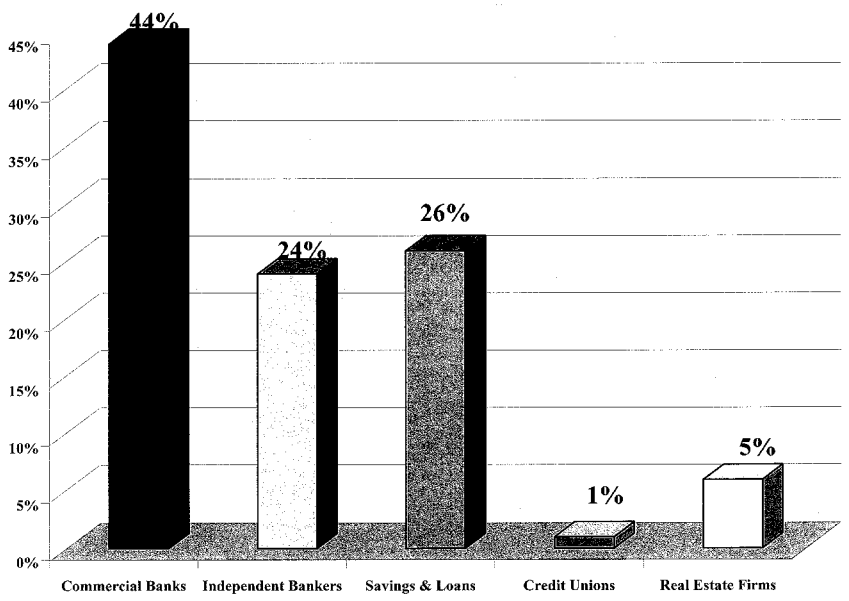
Recent research indicates that the NATIONAL ASSOCIATION OF REALTORS® *does* speak for an overwhelming majority of its members who oppose FHCs' entry into the real estate brokerage and management business. In a recent survey (February 2002), more than nine out of 10 REALTORS® oppose the pending Federal Reserve and Treasury Department rule that would allow big banking conglomerates to enter real estate brokerage and management. Perhaps more importantly, 96 percent support efforts by the NATIONAL ASSOCIATION OF REALTORS® to prevent FHCs from entering real estate brokerage management.



The survey found widespread support among broker-owners as well as sales agents. Some 82 percent of large brokers support NAR's position, according to the survey. The survey also found that 81 percent of REALTORS® want NAR to be even more aggressive in its efforts, and majority of large brokers also want NAR to do more to stop FHCs from entering the real estate business.



Mortgage Loan Originations



* Data according to 1999 Home Mortgage Disclosure

State Banking and Real Estate Activity

Few state-chartered banks engage in real estate brokerage

- Only 6 states have banks with residential real estate brokerage operations
- Only 18 banks in these states have residential real estate brokerage operation
- These banks represent 0.2 percent of all banks and serve areas with 0.57 percent of U.S. population.

	State	Bank Name	City	County	County Pop
1	Iowa	Tama State Bank	Marshalltown	Marshall	39,311
2		Northwest Federal Savings Bank	Storm Lake	Buena Vista	20,411
3		Sac City State Bank Real Estate	Sac City	Sac	11,529
4		Mercantile Bank-Rock Rapids	Rock Rapids	Lyon	11,763
5		United Bank of Iowa	Odebolt	Sac	11,529
6		First Central Bank	Dewitt	Clinton	50,149
7		Maquoketa State Bank	Maquoketa	Jackson	20,296
8		Hardin County Savings Bank	Eldor	Hardin	18,812
9		St. Angar State Bank	St. Angar	Mitchell	10,874
10		First Federal Bank	Sioux City	Woodburry	103,877
11		Tranor State Bank	Tranor	Pottawattami	87,704
12	Georgia	Community Bank	Cornelia	Habersham	35,902
				Jackson	41,589
				Stephens	25,435
13	Wisconsin	Bank of Alma	Alma	Buffalo	13,804
14		Anchor Bank	Madison	Dane	426,526
15		Union State Bank	Kewaunee	Kewaunee	20,187
				Brown	226,778
16	Michigan	First Bank	Excanaba	Delta	38,520
17	North Carolina	People's Bank	Newton	Catawaba	141,685
18	Nebraska	Security First	Lincoln	Lancaster	250,291
				TOTAL POP	1,606,972

Source: Research conducted by the NATIONAL ASSOCIATION OF REALTORS® July 2001. Information collected through telephone calls with state banking and real estate regulators and state REALTOR associations.

Testimony of

E. JOSEPH FACE, Jr.

COMMISSIONER OF FINANCIAL INSTITUTIONS

For the

COMMONWEALTH OF VIRGINIA

on behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

before the

FINANCIAL SERVICES SUBCOMMITTEE ON

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

UNITED STATES HOUSE OF REPRESENTATIVES

July 24, 2002

Good morning Chairman Bachus, Congresswoman Waters and members of the Subcommittee. I am Joe Face, Commissioner of Financial Institutions for the Commonwealth of Virginia, and Chairman of the Legislative Committee of the Conference of State Bank Supervisors (CSBS). Thank you for asking us to share the views of CSBS on bank real estate brokerage and management authority and on H.R. 3424, the "Community Choice in Real Estate Act."

CSBS is the professional association of state officials who charter, regulate and supervise the nation's nearly 7,000 state-chartered commercial and savings banks, and more than 400 state-licensed foreign banking offices nationwide.

As the organization that represents the primary regulators of more than seventy percent of our nation's banks, we very much appreciate this opportunity to appear before the Congress to discuss the states' experience with expanded powers for banks, and with real estate brokerage in particular.

We salute H.R. 3424's sponsors for their appropriate emphasis on competition and choice for communities and consumers. We believe that the legislation in its current form, however, would not promote these worthy goals.

All of us, as public officials, are most concerned with the welfare of consumers. We in the state banking system have a long history of balancing

consumer protection with competitive opportunities that broaden consumer choice. Our experiences offer a valuable perspective on how to create and foster an environment that provides responsible, competitive options to consumers.

Federal Reserve/Treasury Department Proposal

As we have previously stated in written testimony to this committee and in our agency comment letter, CSBS strongly supports the rulemaking proposed by the Federal Reserve and the Treasury Department, which would allow Financial Holding Companies and Financial Subsidiaries to offer real estate brokerage and real estate management services.

While CSBS believes that real estate brokerage and management are activities that are financial in nature, and that these activities are both incidental and complementary to banking, this should not be the thrust of our policy debate. As Representative Calvert and the sponsors of H.R. 3424 appropriately identified in their legislation, advancing choice for consumers should be at the core of our discussion.

According to our most recent survey, 29 states and the District of Columbia currently allow their state-chartered banks to offer real estate brokerage services (see attached chart). States have authorized this activity through explicit authorization, regulatory interpretation, or through "wildcard" statutes that provide

parity with other federal or state charters. Several states have allowed this activity for between ten and twenty years. One state, North Carolina, has authorized real estate brokerage for more than one hundred years.

Despite the longstanding availability of these powers, only a small number of state-chartered banks are actively engaged in real estate brokerage. Among the banks that do use these powers, state bank supervisors have not encountered any significant safety and soundness or consumer protection concerns related to these real estate activities.

We believe that the states' experience supports the Federal Reserve's and Treasury's interpretation of real estate brokerage as an appropriate activity for bank holding companies. Based on this experience, we generally support a determination by the Board and Treasury that real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity.

We qualify this support, however, with the stipulation that financial institutions should conduct these activities in compliance with applicable state laws, prudential operational safeguards and appropriate consumer protections. With these safeguards, we believe that consumers will benefit from the enhanced competition of new providers in real estate services.

Expanded Powers For State-Chartered Banks

The states have always been permitted to authorize powers for the institutions they charter. The importance of this authority to our nation's economic development and to the banking system cannot be underestimated. Congress acknowledged this role in the 1991 Federal Deposit Insurance Corporation Improvement Act (FDICIA) and reaffirmed it in the Gramm-Leach-Bliley Act (GLBA).

Both of those laws recognize the rights of state banks to conduct agency activities as permitted by their state legislators and state bank supervisors, and to conduct investment activities, beyond those allowed for national banks, with the review of the FDIC. State and federal regulators always have the authority to prohibit any activity that threatens the safety and soundness of an institution.

For years before the passage of GLBA, state banks conducted many non-banking or banking related activities, within the bounds of safety and soundness as determined by their state supervisors. These activities have primarily been in the areas of agency and brokerage: insurance sales, sales of uninsured investment products, travel agency and real estate brokerage. You will often hear the states described as the "laboratories for innovation" for our banking system, and the evolution of these types of agency and brokerage services at the state level

certainly helped create the range of financial products and services available in today's market.

The ability for state banks to test new products, services, powers and structures on a state-by-state basis has helped policymakers identify best practices for the delivery of financial services before granting these powers on a nationwide basis. This model has been very effective in promoting safety and soundness and ensuring consumer protection, while fostering innovation within our banking system.

H.R. 3424 – The "Community Choice in Real Estate Act"

The state bank supervisors believe that H.R. 3424, while well intentioned, does not promote, but in fact may limit choice.

While the current level of real estate brokerage activities among state-chartered banks does not give us a large competitive model for study, the communities in which these banks do operate clearly enjoy greater competitive opportunities and choices for the consumer. As with securities brokerage or insurance sales, we believe that, if adopted on a greater scale and with thoughtful consumer protections, the results would be in the consumers' interest.

Also, as I'm sure the committee is aware, state-chartered banks are not the only insured depositories that are able to offer real estate brokerage services. Regulatory interpretations of federal law have allowed Federal Savings Banks to conduct this activity through service corporations. The business lines of community banks and savings and loans are now almost indistinguishable from each other. It therefore seems unfair that the Congress would allow real estate brokerage for federal thrifts and prohibit it for bank holding companies.

Though real estate brokerage authority is available to thousands of insured depositories large and small, very few are engaged in the activity. Meanwhile, an innovative and evolving industry of securities firms, insurance companies and notably real estate firms, are blending banking and real estate services. We see no reason why this evolution should be one-sided, but that would be the effect of H.R. 3424, by preventing banks from offering their customers the same breadth of services.

We would also like to comment on the concern that Federal Reserve and the Treasury should not approve real estate brokerage for holding companies because it would allow the largest banks to dominate the market unfairly. As a part of our mission, state bank supervisors seek to promote credit availability and economic development in all communities in our states. We would strenuously

oppose a system that would allow a few institutions to dominate the financial markets and limit choice in our local communities.

In this regard, our recent experience is telling. The congressional passage of Riegle-Neal in 1994, allowing nationwide branching and banking, led to unprecedented consolidation in the banking industry. During the same period of time, we saw a record number of new banks chartered, mostly at the state level. These new institutions identified opportunities to provide their communities choices in products and service that were not available from some of the large consolidated institutions.

Like banking, real estate is a service business. And as in banking, local providers often know their customers' needs best. If this is truly the case, government intervention to protect these local service providers should not be necessary. We are convinced that increased competition in real estate will benefit consumers and their communities, as well as the service providers that are eager to earn their business.

Again, we commend this committee for its attention to this challenging issue. State bank supervisors appreciate the Committee's interest in our experience with real estate brokerage and management authority and in our views

on regulation and legislation affecting the authority of bank holding companies to conduct these activities.

We thank you for this opportunity to testify and look forward to any questions you and the members of the subcommittee might have.

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Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	N/A	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	N/A	Not Authorized	N/A
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	N/A	Not Authorized	N/A
Connecticut	Yes	No	Statute	36(a)-250(a)(40)
Delaware	Yes	Yes	Statute	Title 5 Del.C. § 761(a)(3)
DC	Yes	No	Statute	DC Official Code §26.1401.09(a)
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes[1]	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No	N/A	Not Authorized	N/A
Idaho	Yes	No	Wildcard	26-1101
Illinois	No	N/A	Not Authorized	N/A - Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802(8)
Kansas	No	N/A	Not Authorized	N/A
Kentucky	Yes	No	Statute	KRS 287.102 for CAMEL 1 & 2 banks only
Louisiana	No	N/A	Not Authorized	N/A
Maine	Yes[2]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	N/A	Not Authorized	N/A
Massachusetts	Yes	No	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	N/A	Not Authorized	N/A
Mississippi	No	N/A	Not Authorized	N/A
Missouri	No[3]	N/A	Not Authorized	N/A
Montana	No	N/A	Not Authorized	N/A
Nebraska	Yes	No	Statute & Regulation	Department Statement of Policy #9
Nevada	No[4]	N/A	Not Authorized	N/A

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Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
New Hampshire	Yes	Yes	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(3)
New Mexico	Yes	No	Wildcard	58-1-54 58-1-34(2)(c)
New York	No	N/A	Not Authorized	N/A
North Carolina	Yes	Yes	Statute	NCGS 53-47c(3)
North Dakota	No	N/A	Not Authorized	N/A
Ohio	Yes[5]	No	Statute	1109.02 ORC
Oklahoma	No	N/A	Not Authorized	N/A
Oregon	Yes	No	Wildcard	708A.010(4)
Pennsylvania	No	N/A	Not Authorized	N/A
Puerto Rico	No	N/A	Not Authorized	N/A
Rhode Island	Yes	Yes	Wildcard	RIGL 19-3-1(7)
South Dakota	Yes	No	Wildcard	51-A-2-14(3)
Tennessee	Yes	No	Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes	No- Preferred	Statute & Regulation	Texas Real Estate License Act TFC 32.001(b)(2) & VTCS Art. 6573a TAC 535.553
Utah	No	N/A	Not Authorized	N/A
Vermont	No	N/A	Not Authorized	N/A
Virginia	Yes	Yes	Wildcard	6.1-58.1 B(3)
Washington	Yes	No	Wildcard	RCW 30.04.127
West Virginia	No	N/A	Not Authorized	N/A
Wisconsin	Yes	No	Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes	No	Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes 30 / No 22	Yes 7 / No 23		

NR: Not Reported.

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N/A: Not Applicable.

[1] Not specifically referenced in the Code. In 1997, the Department approved one bank to perform real estate brokerage services as a power incidental to the purposes for which banks are organized. However, the Department's authority has been challenged recently by the real estate industry and, as a result, a Declaratory Ruling was issued on 2/13/02 which states that the Department will not approve real estate brokerage as an incidental power of banks until the following information is available: (1)Action by the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, or the Office of the Comptroller of the Currency, which would allow a national bank, a financial holding company or a financial subsidiary to perform real estate brokerage services; or (2)Federal legislation that would permit real estate brokerage services by banks, their subsidiaries or affiliates, financial subsidiaries, or financial holding companies; or (3)Other action at the federal level that would permit real estate brokerage to be performed by banks, their subsidiaries or affiliates, financial subsidiaries or financial holding companies.

[2] The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

[3] Depository Trust Companies have real estate brokerage powers under 362.105/Banks may convert to depository trust companies to engage in real estate brokerage activities.

[4] Authorized for Savings Banks under state wildcard authority with OTS

[5] Prohibition on real estate brokerage specifically removed in 1997. Authority available under incidental powers.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.

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Written Statement

Of

Patrick M. Grabill

Before The

United States House of Representatives

Subcommittee on Financial Institutions and Consumer Credit

On

H.R. 3454, The Community Choice in Real Estate Act

July 24, 2002

Good Afternoon, Mr. Chairman and members of the Subcommittee. My name is Patrick Grabill and I'm enjoying my 30th year as a Realtor in the central Ohio area.

By way of background, with the assistance of many talented professionals I have built a real estate brokerage currently approaching 800 sales associates. Our sales in the Columbus area exceed One Billion Dollars annually. The firm is currently known as Coldwell Banker King Thompson. One year ago I sold the organization to NRT, a wholly owned subsidiary of Cendant Corporation. This week I have announced my resignation from the firm to pursue other real estate development interests. I speak to you as a citizen, a Realtor and as a small business owner.

Over the course of building my prior business, I served my industry in various capacities in the Realtor Associations, including local Board President, State Trustee, National Director and member of numerous committees and taskforces, including the state and national associations' finance committees. I take no pleasure in the statements I make here today which are in direct opposition to the position of the National Association of Realtors (NAR). The leaders of the Association, both volunteer and staff are bright, decent, well-meaning people trying to do what is right. I believe the structure of this trade association and its self-perpetuating and self-protecting tendencies have dictated their conformance and desire to "close ranks" on this issue.

With respect to HR 3424 and S 1839, the National Association of Realtors has embarked on a vigorous campaign to position itself as the representative of the entire real estate industry. My purpose in coming before you is to underscore that there are numerous other opinions within NAR that are not being heard precisely due to the structure of the association.

Rather than putting forward a balanced information program on the issue, a campaign has been launched by NAR entitled "Stop The Big Grab". This well funded and highly focused effort comes complete with a cartoon character of an octopus meant to be the banks, reaching out to engulf the industry. Enormous political pressure is being brought to bear on association leaders at all levels and congressional members to support their position on this issue.

There is a pattern to this method of action. Back in the mid-90's the big bogeyman was the invasion of technology to the industry. Microsoft, AT&T and others were deemed "the lions coming over the hill" intent on usurping the industry with their technology. NAR's response was the creation of an organization, the Realtors Information Network (RIN), which promptly lost nearly $16,000,000 of its members' money.

As it turned out the troubled organization was bailed out by transferring the NAR endorsement to another organization that subsequently went public during the technology boom. This event enriched the Association, enabling it to justify the prior RIN troubles as a positive stepping-stone to success. A clever and fortuitous rewrite of history.

As in the current situation there were many voices of opposition to NAR's position. These opponents were ridiculed, labeled disloyal or out of touch and generally drowned out. The leadership charged ahead – right off a cliff as it turned out.

In addition, there have been numerous situations where the National Association of Realtors forged ahead to create such things as a multiple listing service company to compete with vendors supplying local board systems, member health and retirement plans with revenues to the Association and other ventures that were later determined to be anticompetitive, unwise or illegal. In most of these cases the information and funds lost was not disseminated widely among the membership.

The structure of the Association is based upon the "3-Way agreement". This **requires** a real estate salesperson to join all levels of the Association – local board, state and national Association of Realtors. Otherwise they cannot gain access to the local multiple listing system (MLS), or use the term "Realtor" which is a trademark owned by the National Association. (There are certain regional exceptions to local non-member MLS access due to district court decisions which were adverse to the National Association of Realtors position. But the majority of the country is under this mandatory membership requirement.)

This 3-Way Agreement generates an income stream to the National Association of Realtors that is substantial. I believe the dues income generated plus non-dues revenue and income from reserves exceeds $100,000,000 annually. This level of income obtained in small amounts from a vast number of people provides little accountability other than a 500+/- member Board of Directors meeting semi-annually. The leadership team is thus given great latitude to craft issues and their response. The general members have little voice and no ability to vote with their wallets. They can't leave the Association because they'll be cut off from the only source of local data exchange, the local Multiple Listing System. Thus NAR's claim to represent 800,000 members rings hollow.

I believe that NAR's position on this issue is as much about protecting the income and interests of the trade association as about protecting the ability of its members to represent buyers and sellers in real estate transactions.

If banks enter the real estate brokerage business they could ask questions currently being asked by many of the larger regional brokerages today. Today the NAR can largely ignore these concerns because there's only a few (maybe 100) large companies and NAR perceives its interests to lie with the masses (800,000 individual members). With larger, better capitalized firms such as banks asking questions of accountability and value for monies spent, these voices could grow louder, threatening NAR's role as the sole voice for organized real estate.

I do have concerns about banks broadening their scope of activities into the real estate brokerage and property management businesses. Protections against undisclosed "tieing" and firewalls should be required to protect against abuses, insuring a level playing field. But to assume bankers are less ethical, virtuous or less consumer friendly than Realtors is at the very least, a stretch.

It would seem to me that given a less scorched earth approach by the National Association of Realtors, a middle ground of compromise could be reached.

Open competition in the marketplace would, in my opinion, provide a method for consumers to employ who **they** believe will act in their best interest. I believe the competent, caring, community minded professionals I've worked with over the years will be the consumers' choice – if they are given a chance to make a choice. Realtors need not be concerned about competition, providing they stay responsive to the consumer's needs.

To follow the NAR's logic, Realtors should not be allowed to participate in the mortgage or title insurance businesses. This is ludicrous because consumers have demonstrated they would like the homebuying process simplified, streamlined and more affordable. Vertically integrating the services surrounding the purchase of a home can provide opportunities for positive improvements in service. This protectionist legislation puts up unnecessary roadblocks to what I believe consumers want and need. In summary, at the end of the day, the fundamental question is with every other industry faced with new methods of competition and alternative delivery systems, why should traditional real estate be granted special protections?

Mr. Chairman, thank you again for allowing me to submit my opinions. I am available for any questions.

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STATEMENT
OF
ELIZABETH I. HOLLAND
ON BEHALF OF
THE INTERNATIONAL COUNCIL OF
SHOPPING CENTERS

ON THE
COMMUNITY CHOICE IN REAL ESTATE ACT
(H.R. 3424)

TO THE
FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT
SUBCOMMITEE
OF THE
HOUSE FINANCIAL SERVICES COMMITTEE

JULY 24, 2002

SUBMITTED BY:
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 N. FAIRFAX STREET, SUITE 404
ALEXANDRIA, VA 22314
(703) 549-7404

recycled paper

STATEMENT OF ELIZABETH I. HOLLAND ON BEHALF OF THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

Introduction

Good morning Mr. Chairman, members of the Subcommittee, and fellow citizens. My name is Elizabeth Holland and I am the chief executive of Abbell Credit Corporation – a 50-year old family business focused on real estate investment, development and management based in Chicago, Illinois. Abbell Credit manages a 1.6 million square foot portfolio comprised of shopping center, enclosed mall and office properties, including Merle Hay Mall in Des Moines, Iowa and Westgate Village Shopping Center in Toledo, Ohio.

I am here on behalf of the International Council of Shopping Centers (ICSC), and am the chair of the organization's Economic Issues Subcommittee. ICSC is the global trade association of the shopping center industry, and has 40,000 members in the United States, Canada and more than 77 other countries around the world, including shopping center owners, developers, managers, investors, lenders, retailers and other professionals. The shopping center industry is an important part of, and contributes significantly to, the U.S. economy. In 2001, shopping centers in the U.S. accounted for $1.18 trillion in retail sales (approximately one-half of non-automotive retailing in the U.S.), collected over $50 billion in state sales taxes and employed nearly 11 million people.

Thank you for inviting me here today to express ICSC's views on the *Community Choice in Real Estate Act* (H.R. 3424), and for holding another hearing on this very important issue.

Overview

Let me first say that ICSC strongly supports H.R. 3424. This bill, which was introduced by Representatives Ken Calvert, Paul Kanjorski and others in December, currently has 244 cosponsors, including many members of this Subcommittee.

H.R. 3424, along with its Senate companion, S. 1839, would prohibit the Department of Treasury and the Federal Reserve Board (collectively referred to as "the Agencies") from determining that real estate brokerage and management activities are "financial in nature" or "incidental to a financial activity", thereby preventing financial holding companies and financial subsidiaries (collectively referred to as "financial institutions") from engaging in real estate brokerage and management activities. These bills were introduced in response to the Agencies' issuance in January 2001 of Proposed Rules that would allow financial institutions to engage in real estate brokerage and management activities.

Our support of H.R. 3424, and corresponding opposition to the Proposed Rules, is based on several concerns. The first is that the *Bank Holding Company Act* ("the BHC Act"), as amended by the *Gramm-Leach-Bliley Act of 1999* ("the GLB Act"), makes it

clear, in its statutory language and legislative history, that real estate brokerage and management activities are not "financial in nature" or "incident to a financial activity". Instead, such real estate activities are commercial in nature – activities which financial institutions are precluded from engaging in.

The second is that any major decision that would allow financial institutions to engage in real estate brokerage and management should be made by Congress, and not by the Agencies through regulation. We are also concerned that the Agencies issued their Proposed Rules so soon after the GLB Act was enacted.

The third is that, should the Proposed Rules be finalized and become effective, we are very concerned that some financial institutions might use their leverage in a manner that could negatively affect real estate management businesses across the country. This, in turn, could suppress competition and put many viable, longstanding real estate management firms out of business.

The GLB Act and Congressional Intent

In recognition of various regulatory and judicial decisions, the GLB Act amended the BHC Act to permit financial institutions to engage in certain additional activities, including securities and insurance services. It did so by adding these activities to the list of activities considered to be "financial in nature" and "incidental to a financial activity".

The GLB Act, however, gives no indication, either explicit or implicit, that real estate brokerage or management activities are to be added to the list of financial activities. In fact, Congress addressed real estate-related activities in the GLB Act only when it inserted language to restrict national banks from conducting real estate investment or development activities through a financial subsidiary.

Nor did Congress state, or give any signal, that the longstanding separation between banking and commerce should be eliminated. Representative Jim Leach, one of the main sponsors of the GLB Act, made this clear by stating that the GLB Act continues to "repudiate" the mixing of banking and commerce. While both banks and commercial businesses can compete in financial services (e.g., auto manufacturers and banks can both offer auto financing), banks and commercial firms have long been prohibited from engaging in each other's main businesses (e.g., auto manufacturers cannot make commercial loans, and banks cannot sell automobiles).

Although a limited number of thrifts, credit unions, and state-chartered banks engage in real estate management activities, these entities have more restricted and focused lending and investment powers than financial holding companies and other federally-chartered banking institutions. For example, thrifts and credit unions are subject to strict limits with regard to how much they can invest in management subsidiaries or organizations. Therefore, the fact that some of these entities engage in real estate management activities does not support the Agencies' contention that such activities be expanded to larger, more powerful financial institutions across the country.

To be "financial in nature" or "incidental to a financial activity" within the meaning of the GLB Act, an activity must qualify either under Section 4(k)(4) of the revised BHC Act (which lists several specific, statutorily-defined activities) or Section 4(k)(5) (which lists three types of financial activities that the Agencies can further define).

Unlike banking, insurance and securities activities, real estate management is not specifically listed as a Section 4(k)(4) activity. This is the clearest indication that Congress did not intend for financial activities to be expanded to include real estate brokerage and management activities. If Congress had intended for such real estate activities to be considered financial activities, it would have been surely listed them in this section.

The three types of activities listed in Section 4(k)(5) are (1) "lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities"; (2) "providing any device or other instrumentality for transferring money or other financial assets"; and (3) "arranging, effecting or facilitating financial transactions for the account of third parties" (emphasis added).

In the context of the GLB Act, real estate is not a "financial asset". Real estate is neither a financial instrument nor intangible property, like a stock or a bond. Therefore, the provision of real estate management services does not constitute "safeguarding financial assets", nor does it constitute the transfer of "money or other financial assets". Similarly, real estate management activities do not arrange, effect or facilitate a "financial transaction". Instead, they are commercial activities that are performed after real estate transactions are consummated. Minor fiscal activities, such as the collection and remittance of payments to owners, are customary management services and do not constitute the facilitation of financial transactions.

Since real estate management activities do not constitute services specified under Sections 4(k)(4) or 4(k)(5), such management activities should not be construed by the Agencies to be "financial in nature" nor "incidental to a financial activity" under the GLB Act.

Procedural Concerns

The GLB Act also gives the Agencies the authority to determine what, if any, other activities are "financial in nature" or incidental to a financial activity", and can therefore be engaged in by financial institutions.

Section 4(k)(3), however, states that the Agencies must examine several factors before determining whether an activity is a financial activity, including: the purposes of the BHC and GLB Acts; changes in the marketplace in which financial institutions compete; and changes in technology for delivering financial services. We do not believe that any of these factors have given the Agencies reason to treat real estate management services as financial activities.

The Report of the Senate Committee on Banking, Housing and Urban Affairs accompanying the GLB Act states "This authority includes authority to allow activities that are reasonably connected to one or more financial services... The authority provides the Board with some flexibility to accommodate the affiliation of depository institutions with insurance companies, securities firms, and other financial service providers while continuing to be attentive not to allow the general mixing of banking and commerce in contravention of the purposes of the Act" (emphasis added).

Real estate management has always been a commercial activity, both before and after enactment of the GLB Act, and is "not reasonably connected" to one or more financial services. Therefore, we believe that the Agencies erred in issuing Proposed Rules that would reclassify real estate management as a financial activity and erode the long-standing separation of banking and commercial activities most recently reaffirmed in the GLB Act.

Furthermore, significant changes to the GLB Act that would dramatically impact the real estate industry, such as expanding the definition of financial activities to include real estate management services, should be deliberated and legislated by Congress, not by the Agencies through administrative regulations. Congress has repeatedly treated real estate brokerage and management activities as commercial activities, and has indicated that banking and commercial activities should be separated. The Agencies, therefore, should not be overturning longstanding laws through the issuance of regulations.

We are also concerned that the Agencies issued the Proposed Rules too quickly after the GLB Act was enacted. Even if the Agencies agreed with the banking industry's argument that the definition of financial activities should be expanded to include real estate brokerage and management, the Agencies should have taken a more deliberative, timely approach to this issue before issuing Proposed Rules that would, without question, have a profound impact on the real estate industry.

Concerns about Conflicts of Interest Eroding Fair Competition

In addition to the technical arguments that real estate management activities do not constitute financial activities under the GLB Act, we are very concerned about the potential negative effects that the Proposed Rules could have on many shopping center developers and managers.

ICSC supports fair and healthy competition when it preserves the natural tensions that exist in a well-regulated and open marketplace. However, if a financial institution is allowed to participate in real estate brokerage and management activities, its objectivity could be compromised or completely eroded when it reviews a proposed loan that also gives it the opportunity to participate in the profits of project as a broker or a property manager.

For example, if a developer goes to a financial institution with a proposed project for construction or bridge financing, two scenarios could occur – both of which are highly problematic. In the first scenario, the developer agrees to contract with the

institution to provide real estate brokerage and management services (or is able to steer away such services from another provider). The institution would receive a 5-percent management fee on the gross income of the project once it is operational, as well as a 3-percent brokerage commission on all leases. In this case, the institution's objectivity in reviewing the financial soundness of the project is now suspect, if not completely lost, because the financial institution will profit from the operations of the finished project.

In the second scenario, the developer does not plan on having the financial institution participate in the leasing and management of the finished project (which is what currently happens in the marketplace). However, in order to secure financing to build the project, the developer provides the loan officers with extremely detailed information, including:

- The demographic support in the surrounding area;
- Its proposed tenants;
- The design and configuration on the site;
- The current competition in the marketplace;
- The niche the developer hopes this project will fill in order to be successful; and
- The weaknesses and potential pitfalls of the project (such as parcel assemblage, municipal or community opposition, or a land use or zoning amendment) and how the developer proposes to resolve these issues.

The developer provides this information to give the financial institution comfort that the proposed project will be sound and successful. This full and frank disclosure properly facilitates an objective credit analysis by the institution prior to issuing a loan.

However, if a financial institution can compete for brokerage and management contracts, it could discuss a proposed project with a "preferred" developer – one that would allow the institution to provide it with such services (should it get the opportunity to develop the project). This potential scenario would most likely keep the original developer, and others like it, from fully disclosing the project's potentials and pitfalls, and limit the institution's ability to accurately assess the risk of the project, to the detriment of its depositors. We believe that this problem could arise notwithstanding the use of confidentiality agreements. The limited usefulness of confidentiality agreements between competitors in other real estate contexts would also limit their usefulness in this context.

Real Estate Development & Property Management: A Distinction Without a Difference

As mentioned above, the GLB Act continues to prohibit banks and their subsidiaries from making real estate investments or being involved in real estate development. The Proposed Rule, on the other hand, would permit such institutions to engage in real estate management and brokerage activities. While these two rules may at first appear to be compatible, there are many overlapping or identical activities that are performed by property managers and real estate developers and investors.

Successful property management in the retail context involves many of the same functions as a real estate developer, including:

- Formulating and implementing a merchandising plan for the center to include stores that will succeed in the market;
- Overseeing and/or leasing the center consistent with the merchandising plan;
- Marketing the center to consumers, as well as within the retail real estate industry;
- Continually re-evaluating the project for further development and re-development in order to stay competitive within the market through renovations, tenant additions, expansions, and property acquisition; and
- Engaging in municipal and governmental entity relations and negotiations.

The role of a property manager, like that of a developer, is to keep the project competitive by continuing to develop and re-develop the project over time. If a financial institution is allowed to engage in property management, it would have to fulfill these responsibilities and would, in essence, be engaged in real estate development – an activity that is prohibited under the GLB Act.

Furthermore, a management firm's compensation is usually based on a percentage, typically 4 to 5-percent, of the gross receipts of a property. By taking a percentage of the gross revenue as the management company, a financial institution's fees will rise and fall based on the performance of the property. It will be "invested in" the performance of the real estate the same way as if it had an equity interest in the property. This interest would appear to constitute an "investment in real estate" – another prohibited activity.

For the above-mentioned reasons, the International Council of Shopping Centers strongly supports the *Community Choice in Real Estate Act* (H.R. 3424) and opposes the Proposed Rules.

Thank you for opportunity to address you today. I would be happy to answer any questions.

Testimony of

James E. Smith

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

United States House of Representatives

July 24, 2002

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Mr. Chairman, I am James E. Smith, Chairman and CEO of Citizens Union State Bank and Trust, Clinton, Missouri and the President of the American Bankers Association. I am pleased to be here today on behalf of the American Bankers Association (ABA). ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings institutions, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

I want to thank you, Mr. Chairman, for holding this hearing. It allows all parties to get beyond the heated rhetoric and focus on the issues. In the debate over allowing banks to engage in real estate brokerage, we bankers have sometimes been portrayed as working against real estate agents. We disagree with this characterization. The reality is that many agents and bankers already work closely with one another. In fact, I believe that bankers and many in the real estate industry are much closer aligned on the issue of real estate brokerage than the rhetoric suggests. We all believe that customers deserve to have the best possible service, regardless of what company provides it. We all want customers to have many choices so they can seek out that agent or company that they trust. And we all believe that the provision of any financial service should be done in a safe and sound manner – including adhering to all licensing, qualification, sales practices, and continuing education requirements.

If banking institutions offer real estate brokerage and management services consumers would have more choices of real estate firms when buying or selling a home. Real estate agents would have more choices of potential employers. And real estate companies would have more choices of firms to partner with that could provide new sources of capital and technology. By prohibiting bank involvement, H.R. 3424 would do just the opposite – consumers, real estate agents and real estate companies would have ***fewer*** choices. We believe a competitive market is the best way to provide quality real estate brokerage and management services.

As we begin our discussion, it is important to note that combining real estate brokerage and banking services is not a new or unusual activity. Real estate firms do it. Insurance companies do it. Securities firms do it. And well over half the federally insured depository institutions in this country, including many of the largest banks and savings institutions, have authority to do it.

In fact, my community bank in Missouri has the authority to do it and has for many years. Like most banks that could provide real estate services today, I have yet to move into this line of business; but I am rethinking our bank's strategy on this matter. I have to. Even in my small town of Clinton, with 9,600 residents, it is obvious that the world is changing rapidly. I am losing customers to local real estate firms that are aggressively offering mortgages and homeowners' insurance. Since the customer often goes to the real estate firm first, I lose out on the ability to offer those products – and the customer also misses out on the opportunity to have another choice.

And the choices are getting fewer and fewer as aggressive national real estate firms like Cendant (which owns Century 21, Coldwell Banker, and ERA) and RE/MAX gobble up small locally-owned real estate firms. These two firms already control nearly a third of all real estate transactions. Cendant's real estate subsidiary, NRT, ***has averaged about one acquisition per week since 1997.*** In my small town of Clinton, it is RE/MAX that has bought up the largest of the three real estate firms. Its marketing and financial backing, and its mortgage lending and insurance operations, are certainly much bigger than mine. The number two real estate firm seems to be doing well and probably can compete effectively – although, given the rapid consolidation in the real estate brokerage business, it might sell out as well.

However, I believe the third, the smallest agency, may be struggling to compete. I wonder if it has the marketing and financial resources to compete with RE/MAX. What are its choices? Continue to struggle? Go out of business? Sell out to Cendant or another large chain? Would it not be better for it, and for my community, if it could partner with my bank in some fashion, stay in business, and provide locally owned service? How is the National Association of Realtors (NAR) helping that real estate agency or my community by working to preclude such an option?

While I am at it, I would like to comment on community involvement and investment since NAR has raised it in its lobbying campaign. My town is probably typical. Like many others, it is struggling to maintain a vibrant downtown, although many businesses have moved out to the highway malls. My bank has made low interest loans to support downtown development and business, and we have kept our offices downtown. Where are the realtors? They have moved out to the highway.

My experience is not unique. My colleagues who run small community financial institutions also believe that bank provision of real estate services would significantly benefit their customers and communities. In fact, the ability to offer real estate brokerage may be more important for smaller institutions. Rural communities may lack real estate agents or are served only by branches of brokers in other towns because there is insufficient business to warrant a local brokerage office. In such small communities, the bank is perceived as the place that has the greatest amount of information on what properties are for sale, including farmland acreage in agricultural communities.

This issue of open and fair competition is not new – in fact, it has been debated in this legislative body for many years. However, the statutory context within which today's discussion will take place is quite different. In 1999, Congress took an historic step to modernize the regulation of the financial services sector by passing the Gramm-Leach-Bliley Act (GLB Act). In the 20 years of debate on the Act, Congress often found itself in the middle of arguments between financial services industries about who should do what. The result was gridlock and an out-of-date financial system that did not reflect changes in consumer needs or in the use of technology.

To be sure that the pro-competitive goals of the GLB Act continued to be met in a dynamic marketplace, Congress established a flexible, yet conservative regulatory process that would permit the financial industry to offer new services without the need for further legislation. This regulatory system gives the Federal Reserve and Treasury the ***flexibility and responsibility*** to determine what activities should be approved, including considering what is necessary to permit financial holding companies and national bank subsidiaries to "compete effectively with any company seeking to provide financial services in the U.S." This authority is consistent with the Federal Reserve's and Treasury's role to ensure efficient, safe, and competitive financial markets.

Those involved in the debate over the many years that led up to the

GLB Act should not have been surprised to see the current proposal to allow banks to offer real estate brokerage and management services. Over a decade ago, the ABA and the NAR negotiated the rules under which banks would enter the real estate brokerage business. This negotiation was in the context of an early version of the GLB Act which was much more restrictive than the criteria enacted in 1999. Thus, over ten years ago, the NAR recognized that even a more restrictive version of financial modernization could be interpreted as permitting banking companies to offer real estate brokerage services. Furthermore, in 1995, NAR testified on yet another more restrictive forerunner of the GLB Act before the House Banking Committee. In that testimony, NAR stated unequivocally that the language must be clarified to exclude brokerage and management. ***It was not clarified then, nor was it clarified in the GLB Act.*** Certainly the NAR had every opportunity to raise the issue with Congress in 1999 and either chose not to or did so without success.

The GLB Act is a solid, well thought out piece of legislation. It promotes competition and safety and soundness, and enables Congress to avoid becoming embroiled in every competitive issue. H.R. 3424 would put Congress back in as referee for future competitive disputes and would reverse the most important long-term provision in the GLB Act. Having worked so hard to develop a mechanism to continually keep our financial system up-to-date, Congress should not reverse itself less than three years later because one particular group wishes to protect itself from competition.

The system established in the GLB Act should be allowed to work and H.R. 3424 should not be enacted.

Simply put, banking institutions should be allowed to offer real estate brokerage and management services for three key reasons:

- ***It's good for consumers*** – It means more choices, better service, competitive prices and greater convenience.

- ***It's only fair*** – Since real estate firms offer banking and insurance services, it's only fair that banking institutions be allowed to provide real estate services. This is what the Gramm-Leach-Bliley Act is all about – promoting free and fair competition by leveling the playing field.

- ***It's safe*** – All consumer protections, ***including all state licensing, qualification, sales practices, and continuing education requirements, plus strict privacy laws and anti-tying rules,*** would apply to bank-affiliated real estate agents. And because brokerage and management are agency activities, they pose no risk to the bank.

I will discuss these points in detail in the remainder of my statement.

I. Competition Benefits Consumers

The benefits of competition are well known. In a free market, businesses choose to offer new products if they believe they can provide better services at competitive prices. Obviously, not all banking organizations will choose to offer real estate services, but those that do will enter the market because they believe they can meet or beat the competition. Increasing the number of providers raises the bar for all the participants, forcing improvements in efficiency, pricing and service levels – ***all to the benefit of homebuyers and sellers.***

Allowing all banking institutions to provide real estate services expands the choices for everyone: consumers, real estate agents and real estate companies.

More Choices for Consumers

More players in the real estate business mean more and better products for consumers. In any competitive market, new participants bring new, creative ideas to the market – all designed to provide better service and greater convenience, at reasonable prices. In fact, businesses can only be successful in new markets by providing services that meet the needs of customers. Free competition among a wide variety of providers is the cornerstone of our economic system.

More Choices for Real Estate Agents

Real estate agents pride themselves on being independent contractors, choosing the best companies to work for. If there are more companies to choose from, agents' employment opportunities will be much broader. Banks will only be able to attract good agents by offering competitive commissions and other incentive-based compensation packages. And because the real estate business requires expertise, licensing, and other requirements, banks would seek out experienced real estate agents.

More Choices for Real Estate Companies

Forward-looking businesses are always looking for opportunities to improve their franchise value – strengthening, expanding, merging, or even selling their business. Allowing banking institutions to engage in real estate brokerage and management services gives real estate companies more options for bringing additional capital and technology to the table, through joint ventures, for example. Banking institutions also represent potential buyers if agencies choose to sell their businesses. Indeed, in some communities, partnering with the local bank may be the only way for the local real estate broker to compete with the growing national chains.

This is why many real estate firms also oppose S. 1839. For example, in February of this year, ***the Realty Alliance – comprised of many of the nation's largest and most successful independent real estate companies with a total of 62,000 agents – went on record in opposition to NAR's position***. In its letter to NAR, The Realty Alliance stated:

> Our members favor and support a fair, free-market environment unbound by legislative restrictions. We find it hypocritical and fundamentally wrong to ask that national bank subsidiaries be barred from real estate brokerage activity, while real estate brokerages operate mortgage banking, insurance and title insurance businesses.... We believe, in fact, that consumers would benefit from the influx of capital that may result from nationally chartered banks entering this arena. We also believe that increased competition from companies of size would benefit consumers by making all of us sharpen our skills and improve the services we provide. In our view, the role of government is not to limit competition, as your legislation would do, but rather to foster a business environment in which consumers benefit from competition. The members of The Realty Alliance look forward to working, and prospering, in such an environment.

The Real Estate Services Providers Council (RESPRO) also supports bank entry into the real estate brokerage business. RESPRO is a national non-profit trade association comprised of real estate broker-owners, real estate franchisers, mortgage lenders/brokers, and other settlement service providers throughout North America. Its members engaged in real estate brokerage closed over one million residential real estate transactions in 2001 with over 300,000 sales associates, 78,000 empolyees and 50,000 offices. In recent letters to Members of Congress, the Federal Reserve and the Treasury Department expressing support for the proposed rule, RESRPO noted:

> RESPRO strongly believes that all providers should be able to offer consumers the benefits associated with realty-based one-stop shopping, in an open and competitive environment. Our research shows that a number of financial conglomerates (e.g., Sears, Merrill Lynch, GMAC, Cendant), state-chartered banks, and savings banks have entered the real estate brokerage business, with varying degrees of success. Their presence in the real estate marketplace has not changed the basic character of the real estate brokerage business. In fact, we believe their entry has contributed to the development of a wider range of services and has caused traditional real estate brokerage firms to become more efficient and more consumer-focused than they were before.

It is interesting to note that many insurance agencies thought that bank involvement was going to hurt their business – until they realized that it provided many more options than they had

before. We now have a great deal of experience in banks and agents working together under the rules of the GLB Act. The agents have found this to be a very positive experience.

Simply put, H.R. 3424 reduces choices: consumers would have fewer choices of whom to do business with, agents would have fewer choices of whom to work for, and businesses would have fewer choices for joint marketing, fewer potential merger partners, and fewer potential buyers. ABA believes a competitive market is the best way to provide quality real estate brokerage and management services – more competition means more choices.

II. Gramm-Leach-Bliley Act: Flexibility to Adapt to an Evolving Marketplace

The Gramm-Leach-Bliley Act established a framework for keeping our financial system up to date. After working on this for the last 20 years, Congress recognized the need for flexibility in the face of a rapidly evolving financial landscape. As Senator Phil Gramm said at the signing ceremony for this Act: "The world changes, and Congress and the laws have to change with it....We have learned that we promote economic growth and we promote stability by having competition and freedom."

Providing the same opportunities under the same rules and regulations is a key to promoting free and fair competition. In today's real estate market, it is commonplace for real estate companies, securities firms and insurance companies to provide end-to-end services, including brokerage, mortgages, and insurance. We believe this combination of services is good for consumers. Yet not all financial service players have equal ability to offer these options. The Gramm-Leach-Bliley Act was designed to address these inequalities.

To examine this in detail, this section looks at three key issues:

- The marketplace reality that real estate firms are already providing banking and other financial services;

- The flexibility established in the Gramm-Leach-Bliley Act to correct disparity in the provision of financial services among providers and thereby promote free and fair competition; and

- The changing real estate and financial marketplace that demands a flexible regulatory approach to address inequities that exist today and may exist in the future.

Marketplace Reality: Real Estate Firms Already Provide Banking Services

As I noted at the outset, combing real estate brokerage and banking services is not a new or unusual activity. Real estate companies, securities firms, insurance companies, credit unions, savings associations and, in half the states, state-chartered banks can offer real estate services.[1] Ironically, the National Association of Realtors is now objecting to the very combinations that their members have undertaken – offering brokerage, mortgage banking, and, often, insurance under one roof.

Take, for example, two of the biggest real estate companies in the Washington D.C. area – Weichert and Long & Foster. Both offer the full range of financial services. Weichert calls it "One Stop Gold" and Long & Foster calls it "Real-Edge Services." In the following pages, I have included several examples of how real estate companies that offer both banking and brokerage services characterize – in their words – their services. One example is from GMAC – the GM standing for General Motors. This is one of the largest real estate companies in the country.

These examples show the importance real estate companies – and their customers – place on having the option to combine real estate brokerage, mortgage and insurance services. These combinations of services are good for consumers, providing them with lower costs, greater

[1] See attachment developed by the Conference of State Bank Supervisors (CSBS) for a listing of the authorities for each state. Regarding credit unions, recently several credit unions in Wisconsin jointly purchased a majority interest in one of the state's larger real estate brokerage firms

convenience and more service options. The ABA believes that ***all*** banks should have the same opportunities to meet the needs of our customers. In fact, according to NAR's own survey in 1999 and a recent 2002 survey by Murray Consulting, not only is one-stop shopping viewed very positively by homebuyers, but banks, mortgage companies and real estate companies are all viewed ***equally*** as appropriate providers of these services.[2]

Simply put, if real estate services and other financial products are already combined by many real estate and other financial firms, there is no reason why all banking organizations should not be accorded the same opportunities to provide these products to their customers.

Not only is it true that real estate firms already provide end-to-end services, it is also true that the largest real estate companies have been increasing their domination over the market. In 1990 there were 150,000 residential real estate firms. Today there are about half that many. The large chains are buying up more and more local firms. In fact, Cendant's subsidiary, NRT, states on it's website:

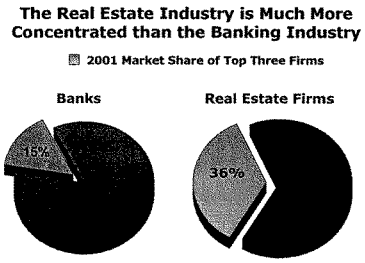
> Since its inception in 1997, NRT has spurred its tremendous growth through a non-stop series of strategic acquisitions and mergers. We are constantly seeking to enhance our success by acquiring strong players in each of our local markets – and expanding into new markets – and supporting them with whatever resources they need. NRT has proven itself to be a company committed to action, acquiring nearly 50 companies annually in the first four years of existence.

The table on the next page shows the top 50 acquisitions by Cendant's NRT with a combined yearly sales volume of $85 billion. Its most recent acquisition was Arvida, the largest realty firm in Florida.

[2] Murray Consulting, *Consumer Perspectives on Realty-Based One-Stop Shopping*, April 2002

With such aggressive acquisitions, it is no surprise that the real estate industry is increasingly concentrated (see Chart 1). In fact, the top ***three*** firms in the brokerage business (Cendant, RE/MAX, and Prudential Real Estate) control 36 percent of the market. By comparison, the top ***ten*** banks have 33 percent of the banking market. Cendant Corporation accounts for 1 out of every 4 real estate agents and alone has a 21 percent market share of existing home sales.

Chart 1



And because consolidation within the real estate industry is occurring at breakneck speed, small realty companies are far more likely to be bought up by one of the major real estate firms than by a bank. Many real estate brokers have told the ABA that they would welcome approval of the proposal because it would provide a potential local partner to help them compete with the large national chains. In fact, the local bank can help the small firm, through joint ventures and providing capital, to compete with the large national real estate firms.

With a more concentrated market than banking, it is ironic – and untrue – that NAR claims that only large banks are interested in real estate powers and will come to dominate the market. In my opening remarks I made the point that this is an issue for banks of all sizes, not just large banks. More than 40 percent of all banks – over 4,000 institutions – have fewer than 25 employees. These are small businesses by any definition and they would like the opportunity to broaden the financial products they can offer their customers and to compete with real estate firms offering loans and homeowners insurance.

LONG & FOSTER COMPANIES

Long & Foster—More Than A Great Real Estate Company.

We're Also A Great Mortgage, Title, And Insurance Company, Too!

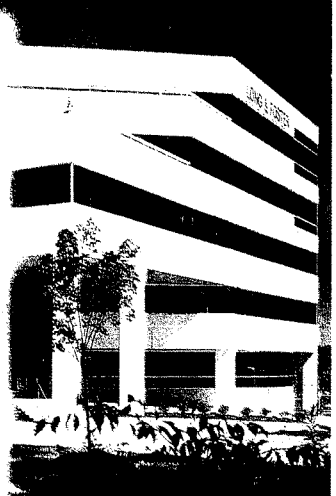
Since 1968, the LONG & FOSTER COMPANIES have grown to become the largest and most respected real estate company throughout our five-state Mid-Atlantic region, with annual sales of $13.3 billion.

We've also become quite a powerhouse in mortgages, title, and insurance, too.

Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance—all in one place!

That's precisely what the LONG & FOSTER COMPANIES do for their clients and customers: deliver top-quality real estate and related financial services—all in one place—from a name synonymous with customer satisfaction and trust.

Convenience costs no more with the LONG & FOSTER COMPANIES. In fact, it could cost you much less. Rely on your professional Long & Foster Sales Associate to put you in touch with the other members of the LONG & FOSTER COMPANIES family, whose expertise in mortgages, title, and insurance fully complements that of our expert REALTORS®.



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LONG & FOSTER COMPANIES — PROSPERITY MORTGAGE COMPANY

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Real-Edge Services, All in One Place.™

The largest independent real estate broker in Illinois, with more than $4 billion in annual sales.

The nation's oldest real estate company actually started in the financial arena nearly 150 years ago, when Baird & Warner began making loans on downtown Chicago properties. We continue to play a dominant role today, with Key Mortgage Services and its subsidiary, North Shore Mortgage, closing more than $500 million per year in residential mortgage loans — ranking among the top five mortgage companies in Illinois. Baird & Warner is once again leading the field, offering the convenience of "one-stop shopping" for a wide variety of real estate-related services.

Emphasis added
Source: http://www.bairdwarner.com/about/default.asp

The nation's largest individually owned real estate company, with over 370 loan products to choose from, including Conventional, FHA, and VA loans.

Weichert Financial Services' Weichert Gold Services Program is raising the performance guarantee from $250 to $1,000 for all new Gold Services applications. If Weichert Gold Services fails to meet its performance guarantees, the homebuyer will receive a $1,000 credit towards their mortgage related costs at the time of settlement.*

*To participate, the buyer must elect to use Weichert Financial Services to obtain a mortgage, Weichert Insurance Agency to obtain homeowners insurance and Weichert Title Agency or Weichert Closing Services to obtain title insurance.

Emphasis added
Source: http://www.weichert.com/

Cendant's NRT Top 50 Acquisitions

Over $85 billion in Yearly Sales Volume

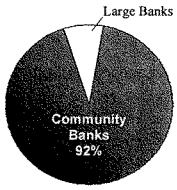
On July 18, 2002, Cendant Corp., released its second quarter earnings report, which stated that the company's revenues were up from $474 in 2001 to $1,440 in 2002. Impressive growth. The explanation was, "Revenues and adjusted EBITDA increased primarily due to the acquisition of NRT Incorporated in April 2002 and increased franchise fees from our Century 21, Coldwell Banker and ERA franchise brands." While NRT had already begun its affiliation with Cendant, this is the first quarter in which the massive presence of these two firms was illustrated by a consolidated balance sheet.

Jon Douglas Company – CA	$10,500	King Thompson Realtors – OH	$1,000
Arvida Realty Services – FL	$7,700	Mansell and Associates – Salt Lake City	$1,000
Burnet Financial Group – MN, Chicago	$6,700	Coast Newport Properties – CA	$950
Fred Sands Realtors, So. CA	$5,000	William Rigg Realtors – Dallas	$935
Hunneman Real Estate Corp. – Boston	$3,700	Coldwell Banker Stanmeyer – Chicago	$900
Gundaker Realtors – St. Louis, MO	$3,350	Joseph J. Murphy Realty – No. NJ	$750
Cornish & Carey Residential RE – CA	$3,300	Federated Realty Group – Milwaukee	$700
Coldwell Banker Stevens, D.C., Baltimore	$2,800	Perry & Butler Realty – Denver	$700
O'Conor, Piper & Flynn – MD, PA, DE, WV	$2,800	Jack Gaughen – Harrisburg, PA	$688
Contempo Realty Bay – CA	$2,400	Coldwell Banker Premier Realty – UT	$687
Northside Realty – Atlanta	$2,250	Kahn Realty – Chicago	$678
The Corcoran Group – New York, NY	$2,200	Podley Doan – Pasadena, CA	$650
Henry S. Miller Realtors – Dallas	$1,750	Seville Properties – Bay Area, CA	$630
Coldwell Banker Paula Stringer – Dallas	$1,700	Coldwell Banker 1st American – IL, IN	$575
Burgdorff Realtors – NJ	$1,500	Marie Powell & Associates – Tampa, FL	$535
Moore and Company – Denver	$1,500	Coker & Cook Real Estate – Sacramento	$518
Pardoe RE and Pardoe & Graham – D.C.	$1,500	The Condo Store – Atlanta	$400
Buckhead Brokers – Atlanta	$1,300	TAM-BAY Realty – Tampa, FL	$399
Gimelstob Realty – FL	$1,300	Higgins & Heath – Orlando, FL	$380
Wardley Corporation – Salt Lake City	$1,300	Del Monte Realty – Bay Area, CA	$350
West Shell – Cincinnati	$1,300	Polley Polley Madsen – Sonoma, CA	$340
Frontier Real Estate – Denver	$1,200	Waterside Property Sales – Sarasota, FL	$340
Dyson & Dyson RE Assoc. – San Diego	$1,100	Coldwell Banker Grand Traditions – OH	$301
Pacific Preferred Properties Inc. – CA, NV	$1,090	Metro Real Estate Services – Pittsburgh	$275
Van Schaack – Denver	$1,000	John M. Grubb Realty – Bay Area, CA	$240

It is also a misconception that all national banks are large (see Chart 2). In fact, over ninety percent of national banks are community banks. Moreover, of the 10 largest banking firms, four appear to already have the legal authority to engage in real estate activities. There certainly has been no market disruption from the fact that well over half of the insured depository institutions in this country have the ability to offer real estate brokerage and management services today.

Chart 2

Over Ninety Percent of National Banks are Community Banks*



* Defined as banks with less than $1 billion in assets

Banks that already offer real estate services through the trust department frequently find themselves having to explain to customers that the bank cannot help them with these services outside the trust relationship. These customers do not understand why the bank is unable to do so. Authority to offer real estate services by the banking organization would bridge this unnecessary gap.

The GLB Act Was Designed to Allow Flexibility to Adjust to the Marketplace

In the years immediately preceding passage of the GLB Act, Congress recognized that the statutory standard for regulatory approval of new activities for bank holding companies — the "closely related to banking" standard — was woefully inadequate in an economy transformed by technological progress. Thus, Congress agreed to a new, considerably broader, standard to enable banks and bank holding companies to remain competitive no matter in what direction financial services evolved. That new standard — activities that are financial in nature or incidental to a financial activity — was intended to provide the flexibility Congress knew would be necessary. Those activities may be conducted only in financial holding companies ("FHC") or financial

subsidiaries meeting certain safety and soundness and community needs standards enumerated in the statute.

Congress did not give the FRB and the Treasury unfettered discretion to make the determination that an activity is appropriate for approval. The GLB Act specifically sets forth certain traditional banking activities that Congress knew were clearly financial in nature.

In addition to these currently-recognized activities, the Act authorizes activities that the FRB and Treasury determine, by regulation or order, to be "financial in nature or incidental to such financial activity." This authority to permit new financial activities is considerably broader than the FRB's comparable authority before the GLB Act was enacted, which had only extended to a new activity that was "so closely related to banking as to be a proper incident thereto."

One specific aspect of this new authority is that the FRB is directed to define the extent to which three types of activities are "financial in nature": (1) lending, exchanging, and engaging in certain other transactions with financial assets other than money or securities; (2) providing any device or instrumentality for transferring money or other financial assets; or (3) arranging, effecting, or facilitating financial transactions for the account of third parties. ABA believes the proposed real estate activities qualify under the first and third statutory categories. For example, real estate brokerage is generally the business of negotiating a contract for the purchase, sale, exchange, lease, or rental of real estate – which we believe is a financial asset – for others.

That real estate is a financial asset cannot be questioned. It is clearly the most important financial transaction for the great majority of people. It is not only the largest monetary transaction in which most people engage, but also the mechanism through which they accumulate a great portion of their wealth over time. According to an April 1999 article in Current Issues in Economics and Finance published by the Federal Reserve Bank of New York, ". . . a large majority of households own real estate, which represents roughly two-thirds of their overall assets. The importance of housing varies over the life cycle of the individual, but real estate remains the cornerstone of most household asset portfolios."

In many cases, real estate also serves as a means of wealth creation through increases in value and by providing real economic benefits through tax advantages. In addition, real estate serves as the underpinning for hundreds of billions of dollars in securities due to the securitization of home mortgages and other real estate loans not only for the private sector banking industry, but also for numerous government-sponsored entities, such as secondary market giants Fannie Mae and Freddie Mac.

The NAR's own 2001 ***Home Wealth Effect Survey*** bears this point out. According to the NAR:

- Homeowners are much more likely to have most of their wealth in their home, as opposed to stocks, bonds, and pension plans;

- The typical homeowner has unrealized ***financial*** gains of $50,000 in their home; and

- Of the homeowners with unrealized gains, 16 percent have changed their spending or savings (i.e., their financial) behavior as a result, compared to 3 percent of stockholders with unrealized gains. Moreover, homeowners are able to use the value of their homes when making important financial decisions.

The Fed and Treasury, in their request for public comment, note that many of the essential aspects of real estate brokerage are already permissible under national bank "finder" authority. The regulators already authorize financial holding companies, as well as national banks and their subsidiaries, to act as finders in bringing together buyers and sellers for financial or nonfinancial transactions. Permissible finder activities include "identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction…"[3] This description of finders authority is the essence of every real estate transaction.

[3] 12 CFR 7.1002.

Apart from their authority with respect to these three specified activities, the Fed and Treasury have broad discretion to determine that other types of activities are "financial in nature or incidental to such activity." In making such a determination, the regulators are directed to consider a number of factors. Among the specific factors to be considered are:

- Changes or reasonably expected changes in the marketplace in which financial holding companies compete or the technology for delivering financial services; and

- Whether the proposed activity is necessary or appropriate to allow a financial holding company to –
  - Compete effectively with any company seeking to provide financial services;
  - Efficiently deliver information and services that are financial in nature through the use of technology, including applications involving systems for data transmission or financial transactions; and
  - Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

The GLB Act standard is a significant expansion of the Fed and Treasury's capacity to consider the competitive realities of our nation's financial marketplace when determining permissible activities for financial holding companies and financial subsidiaries. It is our contention that the marketplace, and the technology associated with it, in the case of real estate brokerage and property management, have already changed and will continue to change dramatically in ways that significantly impact the ability of banks to effectively compete with other companies that provide financial services.

Finally, in addition to the newly-authorized financial activities described above, the Act authorizes financial holding companies to engage in certain nonfinancial activities. Specifically, a financial holding company may engage in a nonfinancial activity, or acquire a company engaged in a nonfinancial activity, if the Fed and Treasury determine by regulation or order that the activity: (1) is complementary to a financial activity; and (2) does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

The NAR would have this Subcommittee believe that Congress meant to preclude real estate activities in the GLB Act and that the legislation accomplished that goal. This is simply untrue, and we have seen no specific evidence to back up this unfounded charge. There is absolutely nothing in the legislative history to support this allegation. To the contrary, the plain language of the statute and the legislative history show the Treasury and Federal Reserve are following exactly the process and using the factors Congress intended.

The GLB Act itself demonstrates Congress's knowledge of this issue in its determination that financial subsidiaries of national banks should be prohibited only from engaging in real estate development activities – the riskier aspect of the business in which the banking organization takes an ownership position. Had Congress intended to prevent banking organizations from engaging in the agency activities of real estate brokerage and real estate management, it clearly knew how to do so. The fact that Congress chose only to prohibit real estate development leads to the conclusion that Congress did not intend to restrict agency activities.

Certainly the NAR had every opportunity to raise the issue with Congress in 1999 and either chose not to or did so without success. Rather, NAR's simplistic argument is that the proposal involves "commerce" and is, therefore, beyond the scope of the GLB Act. However, the issue is not at all that simple. The language of the relevant provisions of the GLB Act does not prohibit commercial activities; rather they set out specific criteria to determine permissible activities. The authors clearly recognized that there was no exact or permanent line to define services that should be permissible. That is why they left the determination of whether or not a given activity is financial in nature or incidental to a financial activity to the Fed and Treasury, and why they developed the specific criteria that are in the statute. To reiterate, if Congress had wanted to make such a determination to exclude the proposed activities, it would have explicitly done so – as it did with real estate development.

It is worth noting, since NAR has raised the specter of banking and commerce, that the Fed has, for many years, been the primary opponent of breaching the wall between banking and commerce. Based on this record, one would certainly expect the Fed to look very closely at any question relating to commercial activities.

The Financial Services Coordinating Council (FSCC), consisting of the ABA, the American Council of Life Insurers, the American Insurance Association, and the Securities Industry Association, supports open competition and is on record opposing H.R. 1839 and S. 1839. These members of these associations know how quickly markets change and the need for a flexible regulatory system keep markets competitive. In the letter, the FSCC states:

> The fundamental purpose of the Gramm-Leach-Bliley Act (GLBA) was to develop a flexible structure for our financial system that could adjust to changes in technology and other aspects of the marketplace. Congress believed, and we agree, that such a flexible structure would increase the soundness of our financial system, promote economic growth, decrease costs, and provide consumers and businesses with more choices. Congress recognized that the legislative process is too slow to keep pace with changes in technology and the global marketplace, as demonstrated by the long history of Congressional gridlock prior to GLBA.

As the next section demonstrates, the real estate market is changing rapidly and with each passing day, the competitive imbalances increase.

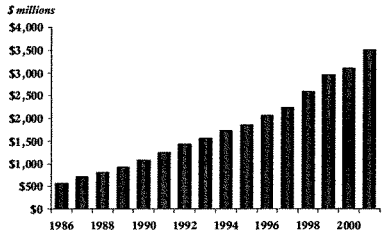
The Changing Real Estate and Financial Marketplaces Require a Flexible Regulatory Approach

As noted above, the GLB Act requires that the regulators consider competitive factors and technological innovations when determining whether activities are financial in nature. A particularly applicable statutory phrase to focus on in this context is whether the activity is "appropriate" to allow institutions to "compete effectively with any company seeking to provide financial services in the U.S." Other types of insured depository institutions have the authority to provide – and are providing – real estate brokerage and management services. We have already demonstrated that real estate brokerage firms are providing financial services throughout the U.S. Clearly, the fact that real estate brokerage firms are offering mortgages and other financial services must be part of the regulatory consideration. Competitive imbalances like this are the very thing that Congress sought to correct when it enacted the GLB Act, and we believe that the use of the flexibility granted to the regulators under Section 103 (a) is clearly justified in the case of real estate brokerage and management authority for banking organizations.

Technological innovations have also had a dramatic impact on real estate markets. One major change is the development of the secondary market for mortgage loans and the efficient process that bundles individual home loans into highly liquid, globally-traded securities (see Chart 3).

Chart 3

Mortgage Backed Securities Outstanding



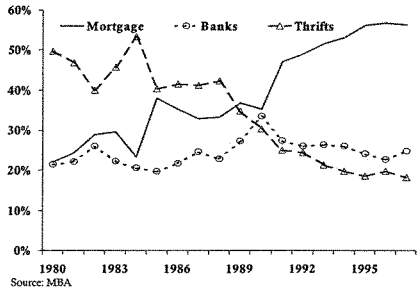
Source: Federal Reserve

The increasing importance of the secondary market has facilitated the rapid growth of mortgage lending outside traditional banking and savings institutions (see Chart 4).

In fact, securitization has significantly changed the very nature of mortgage funding, enabling real estate firms to establish their own mortgage companies and to offer end-to-end real estate transactions – helping a buyer find a home, finance it, and insure it. The result is that traditional deposit-based lenders – banks and thrifts – are often bypassed completely. These are exactly the kinds of technological changes the GLB Act authorized the Treasury and the Fed to address.

Chart 4

Mortgage Originations



Source: MBA

The dominance of the secondary market is clear evidence that this form of funding for plain vanilla mortgage loans is generally superior in terms of costs to funding with bank deposits. If banks somehow enjoyed some special benefit from deposits, or deposit insurance (which banks pay for through premiums and extensive regulatory costs), banks would not be selling into the secondary market,

and the secondary market would not control an ever-increasing share of the marketplace. No amount of deposit insurance can counteract this fundamental principle of efficient markets. More importantly, access to this secondary market source of funding is available equally to mortgage and banking organizations, and is clearly why real estate companies increasingly are affiliating with mortgage banking companies.

To summarize this section, the GLB Act recognized that achieving the goal of promoting competition necessarily required regulatory flexibility. Section 103 (a) provides that flexibility by authorizing the Fed and the Treasury, subject to certain statutory guidelines, to approve additional activities for banking organizations. The ABA believes strongly that real estate brokerage and management meet the criteria. Of course, the Fed and Treasury have not made any determination on this proposal. Regardless of their ultimate decision, the Fed and Treasury should be allowed to follow the process Congress created only two-and-a-half years ago.

III. All Consumer Protections Are Maintained and Bank Safety and Soundness Is Protected

If banking organizations offer real estate services, consumers would actually have more protections under the law than they do today. ***All rules applicable to real estate brokers, including all state licensing, qualification and sales practices will apply equally to bank-affiliated real estate agents.***

NAR has raised the specter of customers being taken advantage of as a result of conflicts of interest that may potentially arise when a real estate broker is affiliated with a lender. The simple fact is that the exact same potential for such abuse occurs, for example, each time an agent from Century 21, Coldwell Banker, ERA (all of whom are affiliated with Cendant) GMAC, Long & Foster or USAA helps a customer buy or sell a house. And yet, although these integrated real estate organizations, as well as state banks in many states, savings institutions, and credit unions, have been selling real estate and funding mortgages for years, there has been no outcry about these conflicts of

interest. Why? — Because the Real Estate Settlement Procedures Act ("RESPA")[4] requires realtors affiliated with lenders to disclose that fact to customers before the purchase occurs.

The RESPA disclosure,[5] which must be on a separate piece of paper, must state the relationship between the real estate agent and the lender and provide the estimated charges or range of charges of the lender. It must also notify the customer that he or she is *not* required to use the lender and is free to shop around for a better deal. If the real estate agent requires the use of its affiliated lender, that agent violates the kickback and unearned fee provisions of Section 8 of RESPA. The customer is expected to sign an acknowledgement of the disclosure.

In addition, consumers have even more protections when their real estate agent *is* affiliated with a banking organization. This is because banks and bank holding companies and their subsidiaries and affiliates are subject to the anti-tying provisions of the Bank Holding Company Act.[6] These restrictions prohibit banks and their affiliates from conditioning the provision of credit on the purchase of another product or service.

Another false impression put forward by NAR is that somehow bank involvement is contrary to the spirit of the Community Reinvestment Act. Nothing could be further from the truth. Approval of the proposal would help low income and minority communities. Because banks are subject to CRA, they would have every incentive to use their real estate authorities to enhance their outreach to communities. The bank would bring real estate services to areas now shortchanged and could use the combination of real estate and financial services to better serve their low-income and minority communities. Moreover, if the real estate unit were a subsidiary of a national bank, that subsidiary would be covered by CRA.

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[4] 12 U.S.C. § 2601 *et seq*

[5] The requirement for affiliated business disclosures is part of the regulations of the Department of Housing and Urban Development that implement RESPA. 24 C.F.R. § 3500.15.

[6] Section 106(b) of the Bank Holding Company Act Amendments of 1970.

Bank involvement in real estate brokerage and management services is also consistent with safe and sound banking. First, providing these services will help to diversify the income stream of these institutions and help to improve their financial base. Real estate brokerage and management services are activities where a bank acts only as an agent for a third party, ***but does not take an ownership position in the property***. By their very nature, agency activities pose very little risk to the safety and soundness of depository institutions.

Second, under the GLB Act, the bank regulators must deem a banking organization to be well-capitalized and well-managed before it can participate in any of the expanded financial activities permitted under the GLB Act, including real estate brokerage and property management. Thus, only financially strong institutions would be authorized to engage in these activities.

Third, banking organizations are also subject to Sections 23A and 23B of the Federal Reserve Act, which limit the amount of credit and other forms of support that a bank could provide to a real estate brokerage affiliate or subsidiary. Such limits ensure that the safety and soundness of the bank will not be negatively impacted by its subsidiaries or affiliates.

Fourth, many banking organizations already have years of experience in providing real estate activities. In fact, the purchase, sale and management of real estate are frequently significant aspects of fiduciary asset management in many bank trust departments. Because banks currently have trust personnel who provide real estate brokerage and management services on a daily basis to trust customers, providing the service outside of the trust department would not be a new activity in which banking organizations lack expertise. Thus, no new safety and soundness issues would be raised.

Finally, it is important to note that a precedent already exists for bank involvement in real estate activities. In over half of the states, state banking regulators have the authority (either explicitly, through regulatory interpretations, and through wildcard and parity statutes) to allow state-chartered banking organizations to engage in real estate activities (see the attached state-by-state listing developed by the Conference of State Bank Supervisors). Moreover, savings institutions

and credit unions already have brokerage authority. Allowing banks the same rights and privileges should enhance the competition for real estate services.

Conclusion

In July, it will be two years since the filing of the original petition requesting a determination that real estate brokerage and management be deemed financial in nature. It is now certain that this determination will not be made until 2003, as was indicated in an April 22, 2002 letter from Treasury Secretary Paul H. O'Neill to Congressman Michael G. Oxley, indicating that, in consultation with the Fed, the Treasury will not make a final decision on this proposed rule until next year.

A fundamental purpose of the GLB Act was to enable banking institutions to compete with other financial services providers, and there is ample evidence demonstrating that the real estate competition is touting the advantages of one-stop homebuying services. While we as an industry have always looked at real estate brokerage and management as providing us with more options to compete in the long term, with ***each passing day***, real estate firms become more deeply involved in financial services such as mortgage and insurance, and banks like mine cannot effectively compete for this business. And with each passing day, the case for allowing banks to offer real estate services only gets stronger.

As an industry we have grave concerns about the broader effects of this controversy and whether it sets a precedent that could hinder future approvals of new powers under GLB. The Act was designed to keep our financial system up-to-date by delegating those decisions to the Fed and Treasury. This goal is being frustrated by efforts to take the case for determining what is appropriate back to Congress, placing Congress in the very role that it delegated to the agencies with the greatest level of expertise to make these decisions based on specific statutory criteria.

H.R. 3424 not only frustrates the GLB Act process, it reduces consumer choice. Consumers would have fewer choices of whom to do business with; agents would have fewer choices of whom to work for; and businesses would have fewer choices for joint marketing, fewer potential merger

partners, and fewer potential buyers. We believe a competitive market is the best way to provide quality real estate brokerage and management services. Increased competition clearly benefits consumers and the economy. It is a catalyst for innovation, more customer choice, better service, and competitive prices. I have no doubt that my customers and my community would benefit if my small bank could offer these services.

In this new, competitive environment, bankers and real estate professionals have much to offer to each other – and to consumers. Real estate professionals could provide the personalized services and experience that is their strength. Independent agents who provide good service today know that they will be competitive with ***anyone***, whether the competitor is another independent agent or one affiliated with a bank.

Many real estate companies realize the strengths that both industries bring to the table. Banks like mine could provide needed capital, cross-marketing opportunities, and technology to support the growth of local real estate firms. Real estate firms also realize the severe limitations H.R. 3424 would impose on their ability to joint market, merge, be acquired, or even to buy a bank.

Not only would consumers benefit from bank involvement in real estate services, but also bank involvement is consistent with safe and sound banking. All consumer protections that apply to independent realtors would apply to bank-affiliated real estate agents – plus bank-affiliated agents would be subject to additional anti-tying regulations. And because brokerage and management are agency activities, they pose no financial risk to the safety and soundness of the banking organization.

Just two-and-a-half years ago Congress made the decision to leave this type of determination to the regulators – so that they could keep the financial structure up-to-date and keep Congress out of the middle of competitive disputes. NAR now wants to put Congress back in the uncomfortable position of referee. Congress explicitly gave the Fed and Treasury the flexibility and authority to make these determinations based on their expert knowledge of the changes in the financial services marketplace. Those agencies should be allowed to carry out the authority that Congress wisely provided to them.

I thank you, Mr. Chairman, for this opportunity to present the views of the American Bankers Association.

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes[1]	Yes[1]	See Footnote[1]	See Footnote[1]
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes[2]	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No[3]	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes[4]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No[5]	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes[6]	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(4)

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Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
New Mexico	Yes	No	Wildcard	58-1-54
New York	No	No	Not Authorized	N/A
North Carolina	Yes	Yes	Statute	NCGS 53-47c(3)
North Dakota	No	No	Not Authorized	N/A
Ohio	No	No	Not Authorized	N/A
Oklahoma	No	No	Not Authorized	N/A
Oregon	No	No	Not Authorized	N/A
Pennsylvania	Yes	No	Parity Statute	7P.S. §201
Puerto Rico	No	No	Not Authorized	N/A
Rhode Island	No	No	Not Authorized	N/A
South Dakota	Yes	No	Interpretation	51-A-2-14(3)
Tennessee	Yes	No	Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes	No- Preferred	Statute	Texas Real Estate License Act
Utah	No	No	Not Authorized	N/A
Vermont	No	No	Not Authorized	N/A
Virginia	No	No	Not Authorized	N/A
Washington	Yes[7]	No	Wildcard Authority	RCW 30.04.127
West Virginia	No	No	Not Authorized	N/A
Wisconsin	Yes	No	Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes	No	Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes: 26 / No: 25	Yes: 6 / No: 45		

NR: Not Reported.
N/A: Not Applicable.

[1] The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

[2] The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

[3] Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.

[4] The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

[5] Depository Trust Companies have real estate brokerage powers under 362.105

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[6] Effective March 16, 2001, Ban 525 allows commercial banks, trust institutions and savings banks to engage in activities and make any investment in the same manner and to the same extent that the activity is permissible for federal savings associations.

[7] See also the following: Pursuant to RCW 30.04.215(3), 32.08.140(16) and 32.08.146, banks can perform the same activities federal banks can, provided that the activities are approved by the Director of the Department of Financial Institutions.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.

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TESTIMONY OF JOHN TAYLOR

On Behalf of the National Community Reinvestment Coalition
Before the
Subcommittee on Financial Institutions and Consumer Credit
of the
Financial Services Committee
United States House of Representatives
July 24, 2002

Good morning Chairman Bachus, Representative Waters, and distinguished members of the Subcommittee on Financial Institutions and Consumer Credit. My name is John Taylor, and I am president and CEO of the National Community Reinvestment Coalition (NCRC). NCRC is a national trade association representing more than 700 community-based organizations and local public agencies who work daily to promote economic justice in America and to increase fair and equal access to credit, capital, and banking services to traditionally under-served populations in both urban and rural areas. NCRC has represented our nation's communities on the Federal Reserve Board's Consumer Advisory Council (CAC), Community Development Financial Institutions (CDFI) Advisory Board, Freddie Mac's Housing Advisory Council, Fannie Mae's Housing Impact Council and before the United States Congress.

On behalf NCRC, I thank you for the opportunity to testify before you here today on an important issue that will impact our nation's progress in extending the American Dream of homeownership to minority and low-and moderate-income families: banks becoming real estate brokers. NCRC's community organizations are at the helm driving the reinvestment movement. Today, as a result of fair lending laws like the Community Reinvestment Act (CRA), which turns 25 this year, poor neighborhoods have been empowered by bank partnerships with community organizations to address credit needs and missed market opportunities. As a result, the number of loans to minority and working class borrowers over the last decade has increased faster than the number of loans to more affluent borrowers.[1] Bank CRA commitments have grown from a

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few million dollars a year to over $50 billion annually.[2] Without these loans and commitments, the economic flow of private credit and capital into our communities would be extinct and hence, certain death for disinvested neighborhoods.

NCRC is very concerned about the ramifications of financial holding companies and national banks entering the real estate brokerage business. As you can imagine from the industries represented here today, you will hear varying perspectives on banks and real estate for consideration. I would like to emphasize that my testimony today will focus on three areas that will be affected if the banking and real estate industry are allowed to merge: competition, consumer protections and serving our communities.

Competition

NCRC has always maintained the position that competition is beneficial for the revitalization of communities. Healthy competition provides low-income and working families with more housing and lending options, and offers them alternatives to high-cost and abusive loans. However, in our rapidly shifting financial marketplace in which our largest banks now own subprime lenders and insurance agencies, we wonder whether product choice is increasing for our communities or whether financial conglomerates are steering consumers into costly and unnecessary products, often layering one product on top of another to maximize their profits.

Over a decade ago, banks had a corner on the mortgage lending business with an overwhelming 80 percent market share.[3] Today, however, is a different story. In 2001, the mortgage broker industry estimated that their market share has dramatically grown to 65 percent of all residential mortgage originations.[4] Does this mean that banks are hurting for mortgage business? Absolutely not. Instead of relying on loan officers, banks now depend upon mortgage brokers to make loans in minority and low- and moderate-income communities. And too often, banks do not engage in sufficient due diligence or do not require brokers to follow fair lending safeguards. The situation would deteriorate if banks now owned a fleet of brokerage companies that combined lending and real estate services.

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The arena of competition has dramatically shifted in the wake of Gramm-Leach-Bliley (GLB), which blurred the distinction among financial industries. In March of 2000, the Federal Reserve Board issued a list of the first 117 bank holding companies that elected to become financial holding companies to take advantage of the opportunities of entering into the insurance and securities markets. As of April 2002, over 600 bank holding companies have elected to become financial holding companies in order to diversify their businesses.[5] Conversely, less than a dozen non-bank firms have converted to financial holding companies for the purpose of seeking a banking charter.[6] Banks are also taking advantage of an ownership stake (less than a controlling interest) in a financial subsidiary, meaning they form partnerships with firms offering a plethora of financial services including: investment planning, estate planning, asset protection, retirement planning, income tax planning and preparation, and education planning.

To reiterate, NCRC supports competition in its truest sense – when parties act independently and offer the most favorable terms to secure business. But one must wonder if today's financial market upholds the true meaning of competition when it seems like GLB has allowed all roads to lead back to the bank. While non-bank lenders own real estate companies, they have not utilized GLB to amass the market power that banks now enjoy after their mad rush to become financial holding companies. Would adding real estate to the menu of businesses that banks can own level the playing field between banks and non-banks or only serve to make banks more powerful to the detriment of real competition in the financial industry?

NCRC maintains that the addition of real estate to the already dizzying array of products now offered by "financial supermarkets" will lead to even greater consolidation of bank market power and result in fewer choices for consumers. Our worst nightmare in a consolidated financial market that includes real estate brokerage is:

- A bank offers favorable loan terms to its real estate affiliate, giving it significant advantage over a competing real estate business that does not have an affiliate.
- The bank with the real estate affiliate stops offering loans to customers of non-affiliated real estate competitors.
- The number of product choices offered to customers of non-affiliated real estate businesses decreases, resulting in higher cost loans.

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During consideration of GLB, NCRC and other observers worried that the consolidation afforded under GLB would lead to only higher prices. That is why GLB commissioned the Department of Treasury to study the effects of mergers among banks, insurance companies, and securities firms on access to loan and bank products for low- and moderate-income communities. Treasury's study in January 2001 concluded that it was too early to assess the impact on cross-industry mergers.[7] NCRC urges Congress and the federal financial supervisory agencies to delay allowing banks to enter yet another industry, specifically the real estate industry, until the Treasury rigorously measures the impacts of GLB on affordability and accessibility of financial services.

When considering banks in real estate, policymakers have not adequately addressed the negative impacts on small real estate businesses of further industry consolidation. Women- and minority-owned small businesses have played a significant role in community revitalization. Many of these real estate entrepreneurs have established themselves in working class communities and dedicated their business to helping rebuild formerly redlined neighborhoods through partnerships with affordable homeownership programs.

According to the most recent Economic Census, over 375,000 small women- and minority-owned real estate businesses operate in this country, generating over $41 million in sales annually. The wealth generated by these new-markets businesses plays a vital role in building a solid foundation from which veritable community reinvestment will flourish. Local real estate brokers are more likely than financial conglomerates to bring wealth back into their community and enter into business relationships with other neighborhood enterprises. The financial independence of small businesses in local communities increases an individual's stake in the economic empowerment of a community and improves the collective well being of our society.

NCRC strongly takes that position that by allowing banks into the real estate business, small real estate businesses will be forced out of the marketplace by the monopolized "financial supermarkets." Gone will be the days in which an entrepreneur dreams of opening a specialized financial business to serve his or her neighborhood customers. Instead, small real estate businesses, insurance businesses and small investment companies will be forced to make a

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decision: forfeit their ownership and affiliate with a bank or face going under when a larger "financial supermarket" opens next door. Not only will our nation's communities hurt, our entire economy will suffer.

Consumer Protection

Existing Problems in the Lending, Insurance and Real Estate Markets

The next area I would like to address in regards to today's subject matter is consumer protection. Repeatedly, I have been told by industry representatives advocating for banks in real estate that cross-ownership within these markets will benefit the consumer by offering greater choice, greater convenience and lower costs. NCRC, as a leader in fighting predatory lending, takes the issue of "benefiting the consumer" very seriously. Last summer, NCRC testified before the full committee during the two-day hearings on predatory mortgage lending practices about the plague of abusive lending and equity stripping from communities of color. Lenders are not alone at the receiving end of NCRC criticism. Our membership organizations who are entrenched in the front lines of protecting homeowners, also battle insurance redlining and unscrupulous real estate "property flippers." In testifying before you today, I must be honest to NCRC's mission of economic justice and state emphatically that injustice exists in the banking, insurance and real estate industries. Until the problems are solved to protect borrowers and consumers, these markets should not be commingled.

According to the Department of Housing and Urban Development's (HUD) just released report *Black and White Disparities in Subprime Mortgage Refinance Lending*, subprime refinance mortgages accounted for 36.3 percent of total refinance mortgages in low-income neighborhoods compared to 23.8 percent of total refinance lending nationwide in 2000.[8] Borrowers in prominently African-American low-income neighborhoods were 1.5 times more likely in 2000 to refinance with a subprime lender than borrowers in all low-income neighborhoods. Borrowers in upper-income African-American neighborhoods were 2.9 times more likely to refinance with a subrpime lender than borrowers in upper income neighborhoods overall.

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NCRC research has found similar disparities. For example, major subprime and manufactured home lenders made 47 percent of the refinance loans in predominantly African-American and Hispanic neighborhoods in the District of Columbia in 2000, a significant increase from 39 percent of the loans in 1999 and 25 percent of the loans in 1994. In contrast, subprime and manufactured home lenders made less than 4 percent of the loans in predominantly white neighborhoods in the three years of the study.

Substantial evidence suggests that subprime borrowers in minority communities experience price discrimination. Over the last several years, Home Mortgage Disclosure Act (HMDA) data has indicated that African-American applicants are denied twice as often as whites. NCRC believes that it does not necessarily follow that African-American are twice as likely to have bad credit. And given that African-Americans are denied twice as often for conventional loans as whites, it does not follow that minority communities should be five times as likely to receive subprime loans as documented in an earlier HUD study.[9] In some geographical areas, the disparity is much greater than five to one.

The major secondary market institutions have found pricing inefficiencies in subprime loans. Freddie Mac states that up to 30 percent of subprime borrowers were creditworthy for prime loans. Fannie Mae's CEO, Franklin Raines, is quoted as saying that half of all subprime borrowers could have received prime loans.[10]

A study by the Research Institute for Housing America (RIHA) concludes that minority borrowers are more likely to receive subprime loans after controlling for credit risk factors.[11] RIHA cautions against a conclusion that price discrimination alone explains this since minority borrowers may have different techniques of searching for lenders. However, considering the totality of the research by NCRC, HUD, Fannie Mae, Freddie Mac, RIHA, and others, it seems fair to say that the burden of proof lies with those who assert that discrimination does not occur in the subprime market.

The issue of insurance redlining is also a problem, but unlike home mortgage lending, insurance data is limited to only a handful of states. Since 1995, California has required insurance

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companies to file data indicating the race and gender of policyholders, the number of policies sold and cancelled, and location of offices and agents, all sorted by ZIP code. Working with the California Department of Insurance, consumer advocate Birny Birnbaum of the Center for Economic Justice (CEJ) obtained data that show disparities between the rate at which insurance companies write policies in low-income communities and the rate at which policies are written in middle- to upper-income communities. For example, in 1995, CEJ reported that approximately 16 percent of California's population lived in underserved communities; however, the data reported by State Farm revealed the company had only 2.59 percent of its agents in those communities.[12] CEJ further concluded that the average insurer wrote only 5.57 percent of its private passenger automobile liability policies and only 6.62 percent of its homeowners policies in low-income, minority ZIP codes.

State Farm, one of the nation's largest insurance companies, is also a federally chartered thrift. As such, it offers a full range of banking services, including taking deposits and making various types of home mortgage, auto and home equity loans, in addition to full range investment products. Interestingly enough, one month ago, State Farm, California's largest insurer of homes, indicated it has stopped writing new homeowner policies in the state due to a surge in the amount of claims over the last two years.[13] If lawmakers add real estate services to the roster of State Farm products, would this only increase the clout of State Farm and other giants? Would conglomerates turn product flow "on" or "off" in order to obtain concessions from regulatory agencies in states dependent upon their services?

As I mentioned, the real estate market is not without its unscrupulous actors either. Property flipping involves buying a home at a low price and then reselling it at fraudulently inflated price within a short time frame, often after making only cosmetic improvements to the property. NCRC has seen the following practices employed in property flipping schemes:

- Real estate investors continually buying neglected properties at sheriff sales and reselling homes at escalated prices to unsophisticated first-time homebuyers;
- Using real estate agents, licensed and non-licensed individuals, as a front;
- Targeting immigrant communities, particularly non-English speaking individuals;
- Colluding with property appraisers to inflate property value;

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- Colluding with home inspectors to secure clean reports; and
- Tricking homeowners into thinking they are dealing with legitimate real estate companies.

In 2000, the Department of Housing and Urban Affairs' Inspector General (IG) testified about the rampant flipping rings the agency was combating.[14] One investigation alone uncovered over 1,200 flipped loans totaling approximately $160 million. Twenty-five percent of the loans were in default. The IG indicated that approximately 100 representatives of lending and real estate industries colluded on this scheme. Another IG flipping investigation involved a HUD employee who conspired with a real estate agent to carry out a systematic scheme of selling HUD-owned properties at prices far below HUD's listed price. The FHA Insurance Fund lost several million dollars as a result of this scam. If Congress allows banks and real estate firms to combine without strengthening the consumer protection laws, our communities are more likely to be victims of scams than beneficiaries of greater product choice and lower prices.

Consumer Choice

As I previously mentioned NCRC was vocal during the consideration of Gramm-Leach-Bliley about the potential of banks product packing without regard of true customer needs.[15] Banks are not shy about advertising their cross-marketing strategy: targeting an existing customer is easier and more profitable than acquiring a new one.

The Bank Holding Company Act, as amended, prohibits a bank from extending or varying the consideration for credit on the condition that the customer obtain any other non-banking product from the bank holding company or any other subsidiary of the bank holding company. This prevents a bank from offering a reduced interest rate on a loan that may be used only to purchase products made or sold by an affiliate of the bank. However, the statute provides exceptions and exemptions that "financial supermarkets" can take advantage of when cross-selling their products.

Another problem for unsophisticated banking consumers is the perception that approval of their loan is contingent on their purchasing insurance or other products from bank affiliates. NCRC

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believes that banks should not force consumers to buy unwanted or unnecessary products, nor should they offer incentives to induce borrowers to purchase more products than they can afford.

Last year Citibank sought and received a favorable exemption from anti-tying prohibitions to offer incentives to their credit card, mortgage, or loan customers who maintain a combined minimum balance in a package of products and services that include annuities, auto, homeowners, life, and/or long-term care insurance from insurance affiliates of Citibank.[16] The incentives would include lower interest rates and/or other items, such as airline frequent flyer miles or contributions to accounts maintained by a customer with other Citibank affiliates.

Is it really in the best interest of the consumer to be bombarded with credit card applications, insurance product brochures, investment fund prospectuses and now perhaps real estate marketing materials when they go to a bank simply to open a checking account? Allowing banks into yet another industry would only compound the abuses associated with incentives and inducements to purchasing an array of products.

Where are banks' priorities when there are over 10 million Americans who do not have checking accounts?[17] Today, NCRC issues a challenge to the lenders to open your doors to the unbanked; for every product package you market to existing customer, dedicate the same energy to marketing Individual Development Accounts and lifeline and low-cost accounts to underserved communities.

Finally, on the issue of choice, NCRC is very concerned that if banks are allowed in the real estate business, consumers using a bank affiliated real estate agent will be at a disadvantage when attempting to shop for the best priced loan product, particularly if a bank employs exclusivity with its affiliate.

Serving Our Communities

The final point that I would like to address is the stake our nation's communities have in the decision to expand banking business lines even further to include real estate. At the start of my

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testimony, I mentioned the great success story of how CRA has lead to the introduction of bank partnerships and commitments in formerly divested communities. I would briefly like to elaborate how CRA must be updated to cover all of the activities that financial institutions are now permitted to undertake.

As you know, CRA only applies to the depository subsidiaries of financial holding companies. Other parts of the holding companies have no obligation to serve the entire community in which they do business, including low- and moderate-income communities. As CRA increasingly applies to a smaller portion of burgeoning holding companies, the risk that low- and moderate-income communities will once again become neglected – after years of steady progress in expanding homeownership opportunities down the income ladder – increases. Despite the Federal Reserve Board's findings in its study mandated by GLB that CRA-related loans are profitable, financial holding companies will become tempted to overlook low- and moderate-income markets as they enter new lines of business.

It is a travesty to each and every underserved rural community and inner city neighborhood in our country that CRA basically ends with checking products and lending activities. When the Unites States Congress passed GBL, it missed a tremendous opportunity to extend community reinvestment requirements to all bank affiliates, insurance companies and securities firms. Thirty-six Members of the House of Representatives support our position and have co-sponsored the Community Reinvestment Modernization Act (H.R. 865). As an addendum to my testimony, I have attached the first few pages of this bill detailing purposes, findings and sections covered, and ask for your consideration of this important measure.

If the banks are allowed into the real estate market NCRC strongly advocates for CRA coverage to be extended to the real estate affiliates to ensure these companies have agents in low- and moderate-income communities to serve minority and working class families. NCRC also strongly encourages Congress to enact a strong anti-predatory law to prohibit abusive lending and property flipping.

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Real-Estate Based Lenders Lag CRA-Covered Lenders

NCRC's data analysis indicates that real estate companies that currently own mortgage companies lag behind banks and thrifts covered by CRA in lending to minority and low- and moderate-income communities. Using the testimony of Philip Burns, representing the American Bankers Association on May 2 before the Financial Services Committee of the House of Representatives, NCRC grouped the mortgage companies that Mr. Burns listed as affiliated with real estate companies. These mortgage companies are affiliated with the real estate firms Long and Foster, Cendant Corporation, USAA, and GMAC. NCRC compared these real-estate based lenders with banks and thrifts covered by the Community Reinvestment Act (CRA) in the years 1999 and 2000, using HMDAWare™ software produced by Compliance Technologies (NCRC's data analysis with detailed charts is attached as an appendix to this testimony).

Over the two year time period analyzed by NCRC, real estate lenders trailed banks by the greatest extent in the category of lending to Hispanics and Blacks. In 2000, CRA-covered lenders issued 13.1 percent of their single family loans (includes home purchase, refinance and home improvement loans to owner-occupants) to Blacks and Hispanics. Real-estate lenders, in contrast, issued less than half that portion, in percentage point terms. These lenders made only 4.9 percent of their loans to Blacks and Hispanics in 2000. In 1999, the disparities were similar. CRA-covered lenders made 11.6 percent of their loans to Blacks and Hispanics while real-estate based lenders issued only 5.1 percent of their loans to Blacks and Hispanics.

In the category of lending to low- and moderate-income borrowers (as defined in the CRA regulations of income levels up to 80 percent of area median income), real-estate based lenders also lag behind CRA-covered lenders by considerable margins. In 2000, CRA-covered lenders made 32.1 percent of their single family loans to low- and moderate-income borrowers (LMI) while real-estate lenders made only 27.7 percent of their loans to these borrowers. The same percentage point gap of (4.4 percentage points) occurred in 1999 between the share of loans real-estate based lenders and CRA-covered lenders offered to LMI borrowers.

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To the casual observer, 4 to 5 percentage point differences in the share of loans offered by real estate and CRA-covered lenders to LMI borrowers may not appear to be a huge difference. The differences, however, are large and critical when considering the actual number of loans. If CRA-covered lenders, for instance, offered the same percentage of loans that real-estate based lenders (or 27.7 percent of their loans) to LMI borrowers, they would have made 227,012 fewer loans to these borrowers during 2000. On the other hand, if real-estate lenders made the same percentage of loans to LMI borrowers as CRA-covered lenders (or 32.1 percent), they would have made 9,017 more single family loans to these borrowers.

NCRC's data analysis reveals that real-estate based lenders trail CRA-covered banks by income level and race of census tracts. In 2000, for example, CRA-covered lenders made 12.8 percent of their single family loans in LMI census tracts. Real-estate based lenders issued only 7.9 percent of their loans in these tracts. Likewise, CRA-covered lenders made 8.2 percent of their single family loans in substantially minority tracts while real-estate based lenders issued only 4.4 percent of their loans in these tracts. In 1999, real-estate based lenders trailed by similar margins in minority and LMI tracts.

NCRC expected the real-estate based lenders to perform better in the area of home mortgage lending (conventional and government-insured loans to owner-occupants combined) since real-estate based-lenders have associated real estate companies dealing directly with home buyers. Yet, NCRC found that real-estate lenders trailed CRA-covered lenders by almost identical amounts in home mortgage lending as with overall single-family lending. For instance, CRA-covered lenders issued 13.9 percent of their home purchase loans to Blacks and Hispanics while real-estate lenders made only 4.8 percent of their purchase loans to these borrowers in 2000 – almost the identical percentages as for overall single family lending. Likewise, CRA-covered lenders made 11.6 percent of their purchase loans in LMI tracts while real-estate based lenders issued 7.7 percent of their loans in these census tracts.

The evidence clearly indicates that CRA has compelled banks and thrifts to focus on low- and moderate-income borrowers as well as minority borrowers and communities to a greater extent than real-estate based lenders. The hard data NCRC presents today reinforces our position that

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Congress must update CRA to apply to real estate companies if Congress allows further combinations of the real estate and banking businesses.

Conclusion

In closing, I leave you with a true story of how a Realtor© helped identify a discriminatory, predatory lending practice and subsequently brought it to the attention of NCRC's Civil Rights Department for assistance.

The victims were an elderly minority couple who owned their home in the Mount Pleasant neighborhood, here in the District of Columbia, for over 43 years. In order to pay medical expenses, an independent mortgage company convinced the couple to take out an adjustable rate mortgage with a prepayment penalty and a loan payment that exceeded the couple's monthly income. Faced with imminent foreclosure, the couple was forced to consider a "short sale" of their home. The victims retained a Realtor© to facilitate the sale of the home, who quickly identified that the appraisal conducted by the mortgage company was substantially inflated. Ultimately, a buyer was identified and a purchase contract placed. Unbeknown to all the parties involved the victims had pre-payment penalty of $13,791.06 included in the note that stalled the real estate transaction. It was only after victims' Realtor© requested NCRC to intervene that the sale took place.

If the real estate agent had been affiliated with a predatory lender or any lender for that matter, it is doubtful that the agent would have acted as an independent watchdog. When we allow additional industry consolidation without providing stronger community protection laws, we remove the checks and balances that guard against abuses in power. Fewer independent businesses with stakes in their communities exist to protect against the exploitation and plunder of greedy conglomerates.

I thank you, Mr. Chairman, for this opportunity to testify and present the views of the National Community Reinvestment Coalition. I will be happy to answer any questions you may have.

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[1] The Joint Center for Housing Studies, Harvard University, *The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System*, (March 2002).
[2] National Community Reinvestment Coalition, *CRA Commitments* (2002). Note: The Joint Center for Housing Studies, Harvard University used NCRC's database to find that low- and moderate-income communities received a higher portion of loans in geographical areas in which lenders and community groups negotiated CRA agreements than in areas in which they did not.
[3] David Olson, Testimony before the Senate Committee on Banking, Housing and Urban Affairs' Hearing, *Predatory Mortgage Lending Practices: Abusive Uses of Yield Spread Premiums* (January 8, 2002).
[4] Ibid.
[5] Financial Markets Center, *Firms electing to Become Financial Holding Companies Under the Gramm-Leach-Bliley Act* (April 26, 2002).
[6] Rick Lazio, President and CEO of Financial Services Forum, Remarks at American Enterprise Institute's Roundtable on the Gramm-Leach-Bliley Act (November 13, 2001).
[7] Robert E. Litan, Nicholas P. Retsinas, *et al.* for the Department of the Treasury, *The Community Reinvestment Act After Financial Modernization: A Final Report* (January 2001).
[8] Randall M. Scheessel for the Department of Housing and Urban Development, *Black and White Disparities in Subprime Mortgage Refinance Lending* (April 2002).
[9] Ibid. See also *National Anti-Predatory Lending Policy is Good for America*, NCRC Anti-Predatory Lending Toolkit (March 2002).
[10] Kathleen Day, "Fannie Mae Vows More Minority Lending," *Washington Post*, March 16, 2000, E1. Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler for America's Families*, Chapter 5, (September 1996)
[11] Anthony Pennington-Cross, Anthony Yezer, and Joseph Nichols for the Research Institute for Housing America, *Credit Risk and Mortgage Lending: Who Uses Subprime and Why?* (October 2000).
[12] Consumer Union Press Release, *State Farm Loses on Attempt to Block Disclosure of Insurance Redlining Data* (March 8, 2000).
[13] E. Scott Reckard, "State Farm Won't Write New Homeowners Policies." *LA Times*, April 23, 2002.
[14] Susan Gaffney, Inspector General, Department of Housing and Urban Development, Testimony before the Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs' Hearing, *HUD's Government Insured Mortgages: The Problem of Property "Flipping"* (June 30, 2000).
[15] John Taylor, Testimony before the Testimony before the Senate Committee on Banking, Housing and Urban Affairs' Hearing, *Financial Services Legislation* (February 25, 1999).
[16] Opinion Letter of J. Virgil Mattingly, General Counsel, Federal Reserve (May 16, 2001).
[17] The Federal Reserve Board, *Survey of Consumer Finances* (1998).

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I

107TH CONGRESS
1ST SESSION

H. R. 865

To enhance the availability of capital and credit for all citizens and communities, to ensure that community reinvestment keeps pace as banks, securities firms, and other financial service providers become affiliates as a result of the enactment of the Gramm-Leach-Bliley Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2001

Mr. BARRETT (for himself, Mr. GUTIERREZ, Mr. FRANK, Mrs. JONES of Ohio, Ms. BALDWIN, Ms. MCKINNEY, Mr. MCGOVERN, Ms. HOOLEY of Oregon, Mr. CAPUANO, Mr. BONIOR, Mr. BLAGOJEVICH, Mr. ACEVEDO-VILÁ, Mr. FILNER, Mr. HINCHEY, Ms. ROYBAL-ALLARD, Mrs. MEEK of Florida, Mr. ENGEL, Mr. MCDERMOTT, Mr. TOWNS, Mr. RUSH, and Ms. NORTON) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To enhance the availability of capital and credit for all citizens and communities, to ensure that community reinvestment keeps pace as banks, securities firms, and other financial service providers become affiliates as a result of the enactment of the Gramm-Leach-Bliley Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Community Reinvestment Modernization Act of 2001".

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.

TITLE I—MODERNIZATION OF COMMUNITY REINVESTMENT ACT OF 1977 AND COMMUNITY SERVICE OBLIGATIONS

Sec. 101. Extension of community reinvestment obligations within a financial holding company.
Sec. 102. Provisions relating to improved responsiveness of insured depository institutions to Community Reinvestment Act of 1977.
Sec. 103. Reduction of CRA rating due to predatory lending and other negative credit practices.
Sec. 104. Responsiveness to community needs for securities and investment services.
Sec. 105. Responsiveness to community needs for mortgages and mortgage related services by mortgage banks.
Sec. 106. Responsiveness to community needs for insurance services.
Sec. 107. Satisfactory ratings required by securities company, mortgage bank, and insurance company affiliates of financial holding companies.

TITLE II—DATA DISCLOSURE REQUIREMENTS

Subtitle A—Disclosure of Insurance Availability and Insurer Investment Information

Sec. 201. Short title.
Sec. 202. Establishment of general requirements to submit information.
Sec. 203. Reporting of noncommercial insurance information.
Sec. 204. Reporting of rural insurance information.
Sec. 205. Waiver of reporting requirements.
Sec. 206. Reporting by private mortgage insurers.
Sec. 207. Reporting of information regarding investments by insurers.
Sec. 208. Submission of information to Secretary and maintenance of information.
Sec. 209. Availability and access system.
Sec. 210. Designations.
Sec. 211. Enforcement.
Sec. 212. Exemption and relation to State laws.
Sec. 213. Regulations.
Sec. 214. Definitions.
Sec. 215. Effective date.

Subtitle B—Improvements in Other Data Disclosure Requirements

Sec. 221. Improve small business and agriculture lending data disclosure.
Sec. 222. Maintenance and disclosure of information by the Financial Institutions Examination Counsel.

TITLE III—REGULATORY AND STRUCTURAL REFORMS

Sec. 301. Antiredlining requirement for financial holding companies.
Sec. 302. Notice and public comment required before establishing a financial holding company.
Sec. 303. Public meetings for bank acquisitions and mergers.
Sec. 304. CRA examination schedule for small banks.
Sec. 305. CRA sunshine requirements.
Sec. 306. Continuing community reinvestment requirement for financial holding companies.
Sec. 307. Changes in reporting requirements under the Home Mortgage Disclosure Act of 1975.

1 **SEC. 2. FINDINGS.**

2 The Congress hereby finds as follows:

3 (1) It is necessary to increase homeownership
4 and small business ownership for low- and moderate-
5 income borrowers and persons of color.

6 (2) The United States has an overall home-
7 ownership rate of 66.7 percent, while Hispanic and
8 African-American homeownership rates are 46.2 per-
9 cent and 46.9 percent respectively.

10 (3) The homeownership rate in central cities is
11 50.3 percent, compared to 73.5 percent for the sub-
12 urbs.

13 (4) It is necessary to close the wealth gap in
14 the United States and to increase access to insur-
15 ance products.

16 (5) In 1998, the median net worth for His-
17 panic, African-American, Asian, and other minority
18 families was $16,400, which was 17.3 percent of the

1 median net worth of $94,900 for nonhispanic white
2 families.
3 (6) Families earning $10,000 to $25,000 had a
4 median net worth of $24,800 in 1998 but $31,000
5 in 1995.
6 (7) Research conducted by the chief economist
7 of the National Association of Insurance Commis-
8 sioners found that after controlling for risk of loss,
9 a 10 percentage point increase in the number of mi-
10 norities in a zip code is associated with a 2 percent-
11 age point increase in the number of "FAIR plans",
12 which are government-sponsored insurance plans of
13 last resort for those who cannot obtain insurance in
14 the private market.
15 (8) In order to increase access to credit, wealth
16 and insurance, it is necessary to modernize the Com-
17 munity Reinvestment Act of 1977 to reflect shifting
18 trends in the financial services industry.
19 (9) Currently, about 40 percent of the assets in
20 the financial industry reside in bank and thrifts and
21 are covered by the Community Reinvestment Act of
22 1977, down from about 60 percent in the early
23 1980s.
24 **SEC. 3. PURPOSES.**
25 The purposes of this Act are as follows:

(1) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

(2) To enhance the ability of financial institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

(3) To ensure that community reinvestment keeps pace with the affiliation of banks, securities firms, and other financial service providers, as provided by the Gramm-Leach-Bliley Act.

TITLE I—MODERNIZATION OF COMMUNITY REINVESTMENT ACT OF 1977 AND COMMUNITY SERVICE OBLIGATIONS.

SEC. 101. EXTENSION OF COMMUNITY REINVESTMENT OBLIGATIONS WITHIN A FINANCIAL HOLDING COMPANY.

Section 4(l) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)) is amended by adding at the end the following new paragraph:

"(4) COMMUNITY NEEDS.—

"(A) IN GENERAL.—All nonbank affiliates of bank holding companies that engage in lending or offer banking products or services shall

Portion of Single-Family Lending to Minority and Low- and Moderate- Income Borrowers

Single-Family Lending to Owner-Occupants **CRA Lenders**				
	1999		2000	
LMI	1,532,409	24.1%	1,666,555	32.1%
Blacks	362,172	5.7%	328,636	6.3%
Hispanics	377,591	5.9%	348,778	6.7%
Blacks+Hispanics	739,763	11.6%	677,414	13.1%
LMI Tracts	744,847	11.7%	663,945	12.8%
Minority Tracts	505,081	7.9%	427,399	8.2%
Total	6,365,749	100.0%	5,183,806	100.0%

Single-Family Lending to Owner-Occupants **Real-Estate Lenders**				
	1999		2000	
LMI	48,171	19.7%	57,417	27.7%
Blacks	6,227	2.5%	5,023	2.4%
Hispanics	6,179	2.5%	5,037	2.4%
Blacks+Hispanics	12,406	5.1%	10,060	4.9%
LMI Tracts	17,965	7.4%	16,407	7.9%
Minority Tracts	11,962	4.9%	9,131	4.4%
Total	244,403	100.0%	206,961	100.0%

Percentage Point Difference CRA Lenders - Real Estate Lenders Single-Family Lending		
	1999	2000
LMI	4.4%	4.4%
Blacks	3.1%	3.9%
Hispanics	3.4%	4.3%
Blacks+Hispanics	6.5%	8.2%
LMI Tracts	4.4%	4.9%
Minority Tracts	3.0%	3.8%

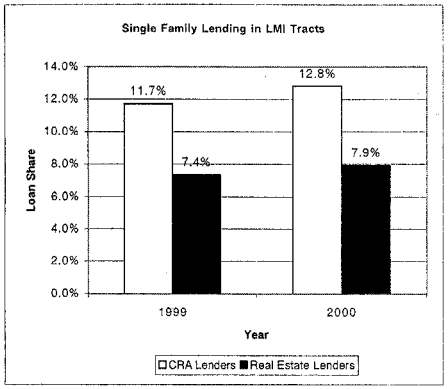
Portion of Home Purchase Lending to Minority and Low- and Moderate- Income Borrowers

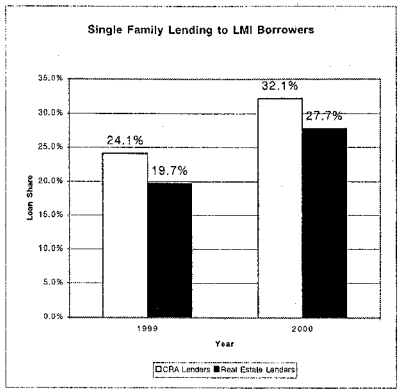
Home Purchase Lending to Owner-Occupants **CRA Lenders**				
	1999		2000	
LMI	733,937	25.6%	911,240	31.1%
Blacks	172,668	6.0%	181,719	6.2%
Hispanics	197,577	6.9%	225,361	7.7%
Blacks+Hispanics	370,245	12.9%	407,080	13.9%
LMI Tracts	308,244	10.8%	338,874	11.6%
Minority Tracts	198,380	6.9%	213,090	7.3%
Total	2,866,650	100.0%	2,928,998	100.0%

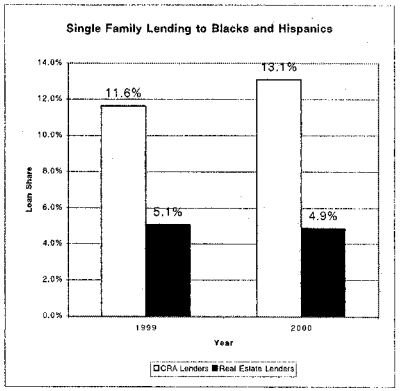
Home Purchase Lending to Owner-Occupants **Real-Estate Lenders**				
	1999		2000	
LMI	36,675	22.2%	46,472	26.9%
Blacks	4,126	2.5%	4,195	2.4%
Hispanics	3,753	2.3%	4,031	2.3%
Blacks+Hispanics	7,879	4.8%	8,226	4.8%
LMI Tracts	11,542	7.0%	13,366	7.7%
Minority Tracts	5,918	3.6%	6,420	3.7%
Total	165,088	100.0%	173,046	100.0%

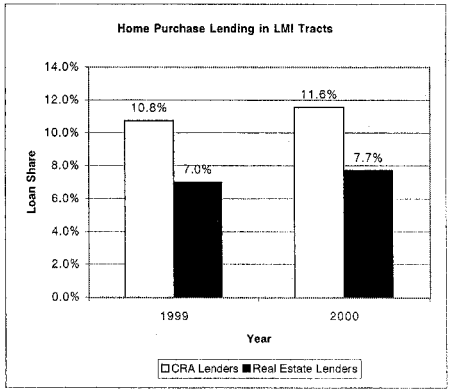
Percentage Point Difference CRA Lenders - Real Estate Lenders Home Purchase Lending		
	1999	2000
LMI	3.4%	4.3%
Blacks	3.5%	3.8%
Hispanics	4.6%	5.4%
Blacks+Hispanics	8.1%	9.1%
LMI Tracts	3.8%	3.8%
Minority Tracts	3.3%	3.6%

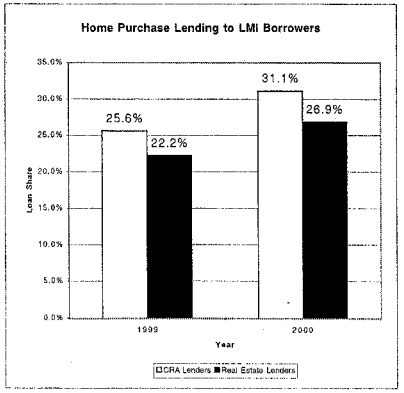
Comparison of Lending between CRA Lenders versus Real Estate Lenders

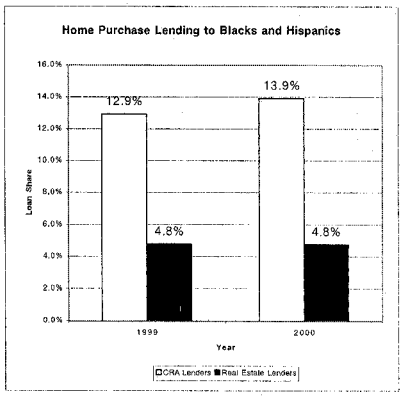












Real Estate Lenders and Their Subsidiaries Used

Cendant Corporation	-	Cendant Mortgage
GMAC Home Services	-	GMAC Commercial Mortgage Corp. GMAC Mortgage
Long & Foster	-	Prosperity Mortgage Co.
USAA	-	USAA Federal Savings Bank

THE ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS

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Pennsylvania Real Estate Commission
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Real Estate Council of Alberta
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Nebraska Real Estate Commission
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Mississippi Real Estate Commission
RICHARD STRADER
West Virginia Real Estate Commission
WAYNE THORBURN
Texas Real Estate Commission

DIRECTOR ALTERNATES
NORMAN BROWN
Kentucky Real Estate Commission
WAYNE CIDDIO
New Mexico Real Estate Commission
JEAN CROSBY
Illinois Office of Banks and Real Estate
CAROL LEIGHTON
Maine Real Estate Commission

PARLIAMENTARIAN
CHARLES CLARK
Georgia Real Estate Commission

HISTORIAN
DENNIS SCHULZ
North Dakota Real Estate Commission

July 24, 2002

Honorable Spencer Bachus
Chairman, Financial Institutions and Consumer Credit Subcommittee
House Financial Services Committee
2129 Rayburn HOB
Washington, DC 20515

Dear Chairman Bachus:

The Association of Real Estate License Law Officials (ARELLO) membership is comprised of real estate regulators from 48 states, the District of Columbia, Puerto Rico and Guam, plus numerous countries and territories throughout the world. Our mission is to support jurisdictions in the administration and enforcement of real estate license laws put in place for the purpose of protecting the public interest.

I am the current president of ARELLO and would like to offer testimony on behalf of our organization regarding the issue of granting banks the power to offer real estate services.

ARELLO has no position on the merits of the bill; the decision to allow banks into the real estate business is outside of its jurisdiction. However, there is one aspect of the proposed regulation that poses the potential for serious negative impact upon consumers, to which ARELLO is adamantly opposed. Failure to require banks' real estate sales to be subject to state real estate licensing laws opens up the possibility for a roll back of the strong consumer protection laws currently in place.

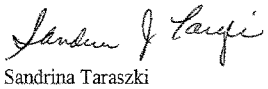
Each of the states, as well as the District of Columbia, Puerto Rico and Guam, has a long standing, comprehensive statutory and regulatory framework to protect consumers in the residential real estate transaction. These laws and regulations, which are administered by Real Estate Commissions and their staffs, protect and regulate the sale of real estate and license those brokers and agents who facilitate the process. The Commissions, in many cases, promulgate regulations and advise the legislatures on changes necessary to reflect the state specific practices. In all cases, consumers have a strong set of laws and agencies continually monitoring the business of real estate, and investigating allegedly illegal or fraudulent real estate practices. In addition, Real Estate Commissions, in most states, are charged with prescribing

educational requirements, both initially and on going, for real estate licensees.

Any Federal legislation or regulation which does not require every person who performs functions related to the sale of real estate to consumers to be subject to the jurisdiction of state Real Estate Commissions is directly threatening the integrity of the real estate transaction process, to the potential detriment of the individual buyer and seller – the consumer. There is no federal legislative or regulatory body designed to protect the consumer from any unlicensed, federally sanctioned real estate salesperson, and in fact, the current situation within the insurance industry claiming federal preemption over state consumer protection laws causes us great concern over the future of real estate commissions' ability to protect the public interest.

Thus, it is ARELLO's position that any legislation must require all entities selling real estate in a state be subject to the jurisdiction of state laws and regulations pertaining to real estate. Federal preemption could clearly lead to a roll back of the protections afforded to consumers in this, the biggest transaction of most peoples' lives.

On behalf of the Board of Directors,



Sandrina Taraszki
President

LATTER & BLUM INC/REALTORS®
Since 1916

Arthur Sterbcow
ABR, ABRM, CCIM, CRB, CRS, GRI
PRESIDENT

July 15, 2002

Sent via Facsimile to (202) 225-7313

The Honorable Richard Baker
United States House of Representatives
341 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Baker:

As President of LATTER & BLUM Companies, I feel that it is very important to personally communicate our feelings on the issue of Banks entering the Real Estate business.

We DO NOT oppose their entry into real estate brokerage.

We own and operate LATTER & BLUM, Inc./Realtors and C.J.BROWN Realtors. Our organization is composed of over 1,000 real estate agents and staff with 23 offices covering Louisiana and Mississippi.

We are a Louisiana based organization and are proud to be recognized as the largest Real Estate Company in the Gulf South by the National Association of Realtors as well as independent media reporting services.

LATTER & BLUM is headquartered in New Orleans, Louisiana, and our C.J. BROWN operation is headquartered in Baton Rouge, Louisiana.

Our organization provides Appraisal services, Property Management, Insurance and Mortgage Brokerage Services.

We vehemently disagree with the National Association of Realtors' position on this matter. It is highly unusual for our firm to oppose NAR's position on issues because, as a general rule, we DO support wholeheartedly their efforts. Our firm collectively is the largest contributor to LARPAC in the state. We cannot support or defend their position this time, however. It is dead wrong.

Competition is good and healthy. Our firm does not need anti-competitive protective measures from the government or the National Association of Realtors to keep us in business. Our organization was founded in 1916 and we have done quite well in the face of new and innovative competitors. Each new entrant over the years has brought us challenges, to be sure, but we have always prevailed and we will do so against Banks. They provide no unfair advantage against our firm, in our opinion. We do believe they may bring a different level of products and/or innovations that will force real estate companies to even further improve their delivery of services and products. This is the natural evolution

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July 15, 2002

of business. Poorly managed real estate companies with poorly trained real estate agents may not survive the new challenge, but that is in the best interest of the consumer. That is the American Way.

Quality real estate firms have nothing to fear. Bring on the Banks. We may learn new things and do a better job for our existing and future customer client base.

It is hypocritical and self-serving to prevent Banks from entering the real estate brokerage industry while allowing real estate companies to provide mortgage brokerage and other ancillary services. The issue of Federally insured deposits creating an unlevel playing field in favor of the Banks is a red herring and a diversion to the real issue of not wanting competition. Let's speak the obvious. The Public certainly can see it.

We would most appreciate your consideration of allowing the free market place to work.

Your valuable energies and talents should be directed to the truly serious and potentially catastrophic Insurance industry problems of our region, as well as flooding issues, rather than become embroiled in this industry protectionist issue.

Bringing businesses to Louisiana and our surrounding region and increasing homeownership are critical. Escalating insurance costs and flooding worries are the real immediate problems for Louisiana and Mississippi citizens- not Banks.

Thank you for your help and the many years of support for our firm and others.

Best Regards,

Arthur Sterbcow

AS/ma

STATEMENT

OF

STEPHEN H. MURRAY
PRESIDENT
MURRAY CONSULTING, INC

AND

ANNE RANDOLPH
PARTNER
MURRAY CONSULTING, INC

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

ON BANK-REAL ESTATE AFFILIATIONS

JULY 24, 2002

In June of 2001, Murray Consulting, a prominent residential brokerage industry consulting and research firm, and Harris Interactive, among the world's most respected research firms, conducted a survey to determine the habits, practices and perceptions of American home buyers and home sellers. The report, entitled "Room for Improvement Perspectives of Consumers and the Professionals Who Serve Them" was completed in January 2002. In total, over 3,500 recent and future buyers and sellers were asked questions about their experiences and/or plans with respect to the use of real estate associates and brokerage firms. An additional 2,000 consumers were polled via telephone survey during the survey as well.

In March of 2002, Murray/Harris returned to the study group with additional questions concerning "one-stop" shopping in the purchase and sale of housing and the prospect of financial institutions entering the real estate services/brokerage business. This second study resulted in the receipt of 2,052 responses from consumers who had recently purchased a home or were planning to do so in the next twelve months.

The survey had a confidence level of 95 percent plus or minus 2 points. All questions were reviewed by Harris Interactive to insure that they were not leading or biased for or against the proposition as far as "one-stop" shopping and financial institutions were concerned.

The key findings were as follows:

American housing consumers were strongly inclined to believe that "one-stop" shopping, being able to find and purchase a home, and procure all necessary financing, insurance, inspections, etc. was in their best interest. Over 82 % indicated they would strongly consider or somewhat consider using a single supplier of such services;

These results were up substantially from a similar study done in 1999 by the National Association of Realtors (NAR). In fact, the questions used were identical to those used in the previous NAR study.

The satisfaction rate with the services that purchasers utilized during the process of buying a home were progressively higher as they used more services from a single supplier. For example, of all buyers the satisfaction rate was 62%; for those using a real estate agent the satisfaction rate was 66%; and for those who utilized financing or other services the satisfaction rate was 78%;

Consumers are turning to real estate brokerages that offer "one-stop" shopping with increasing frequency. In 1999, consumers acquired 109,918 mortgages and 70,477 title insurance policies from the nation's 75 largest real estate brokerage firms. In 2001, consumers acquired 200,389 mortgages and 277,651 title insurances policies from among the largest 125 firms. All of this data was derived from the REAL Trends 500 Report, a compilation of verified data from the country's leading residential real estate brokerage firms. The desire of consumers to utilize a variety of providers is increasing quickly.

American housing consumers felt strongly that real estate brokerage firms, mortgage lenders and banks were roughly equally capable of providing "one-stop" shopping; in fact, consumers slightly favored mortgage lenders (76%) and banks (74%) over real estate brokerage firms (72%) in providing "one-stop" shopping service packages;

Among all participants in the study, consumers said that they felt the entry of banks into the real estate services business would be a positive trend. The reasons for consumers positive view of banks entering the real estate services business were 1) increasing the range of services from one supplier (68%), the opportunity have better prices (48%) and improving the choices among providers (47%);

Among American consumers who identified themselves as being in favor of "one-stop" shopping in real estate services were even more favorable towards allowing banks to offer a full range of real estate services. Almost 80% of all consumers favored the entry of banks into real estate services because it will improve the range of services available; nearly 56% because it would lower prices for these packaged services and 58% because the choices available to consumers would improve.

We appreciate the opportunity to provide this statement to the Committee.

Stephen H. Murray
President
Murray Consulting Inc

Anne Randolph
Partner
Murray Consulting, Inc

Testimony of

America's Community Bankers

on

H.R. 3424, the Community Choice in Real Estate Act

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

of the

U.S. House of Representatives

on

July 24, 2002

America's Community Bankers
Washington, DC

America's Community Bankers (ACB)[1] is pleased to submit this statement for the record on today's hearing before the Subcommittee on Financial Institutions and Consumer Credit regarding H.R. 3424, the so-called "Community Choice in Real Estate Act." This legislation would prohibit the Federal Reserve Board and the Department of Treasury (collectively, the Agencies) from allowing financial holding companies (FHCs) and financial subsidiaries of national banks [2] to engage in real estate brokerage and real estate management activities.

ACB Position Summary

ACB strongly opposes H.R. 3424, and urges Congress not to pass this legislation. We are particularly concerned about an amendment modeled after H.R. 3424 that was included by the House Appropriations Committee in H.R. 5120, the Treasury/Postal appropriations bill for FY 2003.

ACB opposes this amendment both on the substantive grounds laid out in this statement, and on procedural grounds.

By including this amendment on the Treasury/Postal appropriations bill, proponents of this legislation have effectively circumvented the regular legislative process. In 1999 the Congress completed over 20 years of deliberations and passed the Gramm-Leach-Bliley (GLBA)[3]. financial modernization legislation. It listed a full range of financial activities permissible for financial holding companies. But Congress realized that this list could not be considered the final word, and so permitted the Federal Reserve and Treasury to jointly approve additional activities to allow the financial industry to adapt to changing market conditions. While the appropriate authorizing committees have exercised their oversight function on this rule, they have not determined it is necessary to intervene in the regulatory process they were instrumental in creating. Unfortunately, the Appropriations Committee – which was not involved in the debate on financial modernization – has precipitously intervened without hearing and without consultation with the authorizing committee. The House Financial

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[1] ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

[2] 66 Fed. Reg. 307 (January 3, 2001). The Board and the Secretary extended the comment period deadline from March 2, 2001 to May 1, 2001. 66 Fed. Reg. 12440 (February 27, 2001).

[3] 12 U.S.C. § 1841 *et seq.*

Services Committee and this Subcommittee should vehemently oppose this rider to the Treasury/Postal appropriations bill.

We urge Congress to allow the Agencies to complete the process set forth in Gramm-Leach-Bliley and to finalize their proposed rule to add real estate brokerage and management to the list of permissible activities for FHCs and financial subsidiaries of national banks. We believe the proposal will provide additional competitive opportunities for community banks to serve their customers. Equally important, ACB believes the proposed rule will benefit consumers of real estate transaction services, who will enjoy greater convenience and choice, which could help lower overall transaction costs.

In addition, we urge Congress not to pass this legislation because it would reverse a core provision of the Gramm-Leach-Bliley Act. By passing this historic financial modernization law, Congress lifted the Depression-era barriers separating financial services in America. In doing so, Congress made the wise decision of authorizing the Agencies to determine which activities are proper for financial holding companies. To prohibit the Agencies from moving forward on this proposed rule would be a major step backwards from the progress being made in implementing the GLBA. We strongly urge Congress to preserve the integrity and the intent of the GLBA by rejecting H.R. 3424.

Background

It is important to note that there is nothing new or particularly controversial about financial institutions offering real estate brokerage services. As the Subcommittee knows, many financial institutions have had this authority for some time. More than two-dozen states permit the activity for their banks, and the Office of Thrift Supervision (OTS) has allowed federally chartered savings associations to offer real estate brokerage services through separate service corporations for a number of years. In a 1997 interpretative letter, the OTS reasoned that real estate brokerage was permissible for a federally chartered savings association (through a service corporation) because it "complements mortgage lending in several respects."

Today, federal savings associations with real estate brokerage operations generally do so as a means to fulfill service needs and add further value to the consumer relationship. In some instances, these institutions may be stepping into a void, as is the case in many rural communities, to offered a

needed service. Even so, fewer than 10 percent of all OTS-regulated institutions have elected to use this power. While the majority may choose not to offer real estate brokerage services for a wide variety of reasons, including individual resources and long-standing relationships with local realtors, what is clear is that no unfair competition or lack of consumer choice has resulted.

In point of fact, adding value to the customer relationship is precisely why, during the same time period, many national realty chains have responded to increasing consumer demands for more simple or "one stop" real estate transaction services by starting affiliates that offer real estate lending. These companies obviously identified a competitive opportunity. Today, they represent significant competition for depository institution providers of real estate lending services.

The Proposed Rule

On January 3, 2001, the Agencies published a proposed rule in response to a request for a "financial in nature" determination. Specifically, the Agencies were asked to determine that real estate brokerage and management activities are financial in nature or incidental to a financial activity. The GLBA allows bank holding companies that qualify as FHCs to engage in a broad range of listed activities defined as financial in nature. Under GLBA, FHCs also can engage in other activities that the Board, in consultation with the Secretary, determines to be financial in nature or incidental to a financial activity.

After considering the relevant statutory factors, the Agencies have proposed a final rule that would amend section 225.86 of the Board's regulations to add real estate brokerage and real estate management to the "laundry list" of permissible activities for FHCs.[4]

[4] Under the proposal, "real estate brokerage" would be defined as acting as an agent for a buyer, seller, lessor or lessee of real estate; listing and advertising real estate; providing advice in connection with a real estate purchase, sale, exchange, lease or rental transaction; bringing together parties interested in consummating such a real estate transaction; and negotiating on behalf of such parties a contract relating to such a real estate transaction. "Real estate management" activities would include offering such services as procuring tenants; negotiating leases; maintaining security deposits; billing and collecting rent payments; providing periodic accountings for such payments; making principal, interest, insurance, tax and utility payments; and generally overseeing the inspection, maintenance and upkeep of real estate.

ACB Strongly Supports The Proposed Rule

As noted at the outset, ACB strongly supports the Agencies' proposal to add real estate brokerage and management to the laundry list of FHC-authorized activities that are financial in nature or incidental to a financial activity. We believe this action will enhance competitive opportunities while benefiting consumers. In ACB's view, there is ample support and precedent for the proposed rule.

- **Real estate brokerage is "financial in nature."** Real estate brokerage is part of one of life's most important financial transactions: the purchase of a home. It is a key step in (i) receiving pre-approval for a mortgage loan; (ii) identifying a property to purchase; (iii) securing the financing to complete the purchase; and (iv) obtaining the necessary insurance (such as private mortgage and title insurance) for the transaction.

- **There already is strong precedent for allowing FHCs to engage in real estate brokerage and management.** For some time, federal savings associations have been permitted to engage in real estate brokerage activities through affiliated service corporations. Also, more than two-dozen states permit their state-chartered banks to provide real estate brokerage services. And while the number of financial institutions that currently engage in real estate brokerage is not significant, those institutions with real estate brokerage operations have managed these activities safely, prudently and with the goal of serving the financial services needs of their customers.

- **Real estate brokerage is <u>not</u> a mixture of banking and commerce.** Real estate brokerage is not a commercial activity in the sense that it involves manufacturing or farming activities. As the proposed definitions confirm, real estate brokers do not act as principal but, rather, as agents. This role is very similar to that of the transaction "finder." The Board and the Secretary recently approved this activity for FHCs and national banks and many state-chartered banks have acted as finders for some time. Bringing together buyers and sellers for financial transactions that the parties themselves consummate is at the core of a real estate broker's function.

- **Consumers of real estate will benefit from FHCs being able to offer real estate brokerage services.** Increasingly, consumers are looking for

the option of "one stop" shopping for real estate transactions. This is precisely why several large real estate companies currently operate mortgage lending affiliates and subsidiaries. In fact, any company may originate mortgage loans without owning a depository institution. The addition of FHCs to the roster of real estate brokers will lead to increased competition, which could result in lower transaction costs for real estate consumers.

- **Existing laws would continue to protect consumer choice.** While it has been suggested that allowing FHCs to offer real estate brokerage and management services could lead to anti-competitive practices, just the opposite will result. In fact, existing federal laws protect consumers from anti-competitive practices. The anti-tying rules of the Bank Holding Company Act prohibit the "tying" of real estate credit services to the use of an affiliated real estate broker. In addition, the affiliate transaction rules of sections 23A and 23B of the Federal Reserve Act add arm's length requirements to all affiliate relationships. As well, the privacy protections mandated by GLBA would extend to customers of FHC-affiliated real estate brokers, unlike their non-FHC-affiliated counterparts. Finally, FHCs would be subject to the same state laws governing the licensing of real estate brokers, which would add yet another layer of consumer protection.

- **Precedent supports real estate management.** The addition of general real estate management activities likewise is a natural extension of currently permissible activities. First, as noted in the proposal, savings and loan holding companies and service corporation subsidiaries of federal savings banks have been authorized to engage in real estate management and real estate brokerage for some time. In addition, financial institutions generally perform activities that are operationally and functionally equivalent to the typical responsibilities of a real estate manager. For example, financial institutions have long engaged in such activities as collecting loan and lease payments; managing and disposing of "other real estate owned" and "debt previously contracted" property; and making principal, interest and tax payments on collateral securing real estate transactions. FHCs and financial subsidiaries are well suited to perform the functions of a real estate manager.

Nothing in the proposed rule portends of unfair competition or decreased consumer choice. At its core, this proposal is an opportunity to provide

consumers with more choice for realty services. Equally important, this proposal would offer such enhanced freedom of choice with an attendant scheme of comprehensive consumer protection regulation, including truth in lending and consumer privacy protections. If the Agencies proceed to finalize this proposal, consumers will only benefit.

ACB member institutions have been stalwarts over many decades in providing home ownership opportunities for Americans in communities throughout this country. Our members constantly seek new ways to offer their customers greater choice and convenience. This proposal is such an opportunity.

H.R. 3424, the "Community Choice in Real Estate Act"

ACB strongly opposes H.R. 3424 and urges Congress not to pass this legislation in any form, either as a freestanding bill or as part of another legislative measure.

Contrary to its title, this legislation is both anti-consumer and anti-competitive. In this statement, we have listed a number of reasons why the proposed rule will benefit consumers by expanding competition and choices for real estate brokerage and management services. By prohibiting the Agencies from moving forward on this rule, H.R. 3424 will only limit the choices available to consumers for these services.

It is worth noting that, in recent testimony before the Senate Banking Financial Institutions Subcommittee, two major real estate organizations – The Realty Alliance and RESPRO – opposed the NAR's campaign on this issue as anti-competitive. These organizations pointed out that many real estate brokerage firms are offering financial services themselves, including mortgages and insurance.

Conclusion

In conclusion, we would like to emphasize the following points to the Subcommittee:

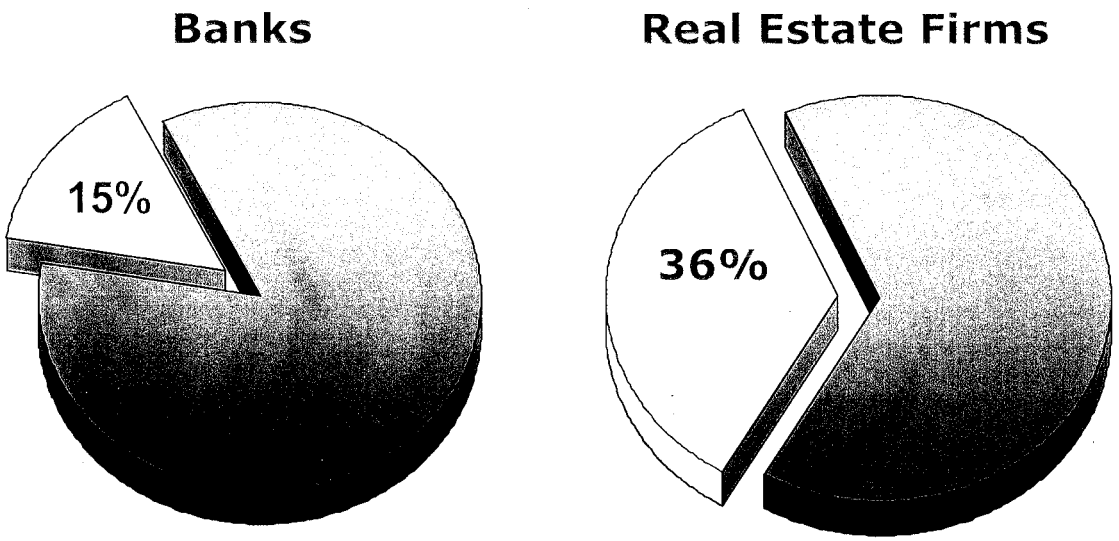
- The proposed rule will increase competitive opportunities for financial institutions.
- Enhanced competition will lead to increased convenience and choice, which will benefit consumers directly.

- The proposed rule will help level the playing field between and among financial institutions and other real estate lenders that offer a full range of real estate transaction services.
- The proposed rule is well grounded in precedent and the Agencies' "financial in nature" analysis is sound.
- H.R. 3424 is anti-consumer and anti-competition and should be rejected.

Thank you for taking our views on this legislation into consideration.

The Real Estate Industry is Much More Concentrated than the Banking Industry

☐ 2001 Market Share of Top Three Firms



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$200,000-299,999	50,000
$300,000-399,999	75,000
$400,000-499,999	100,000
$500,000 or Greater	125,000

Mortgage Amount	Bonus Miles
$100,000	10,000
$150,000	15,000
$200,000	20,000

Home Equity Loan or Line of Credit	Bonus Miles
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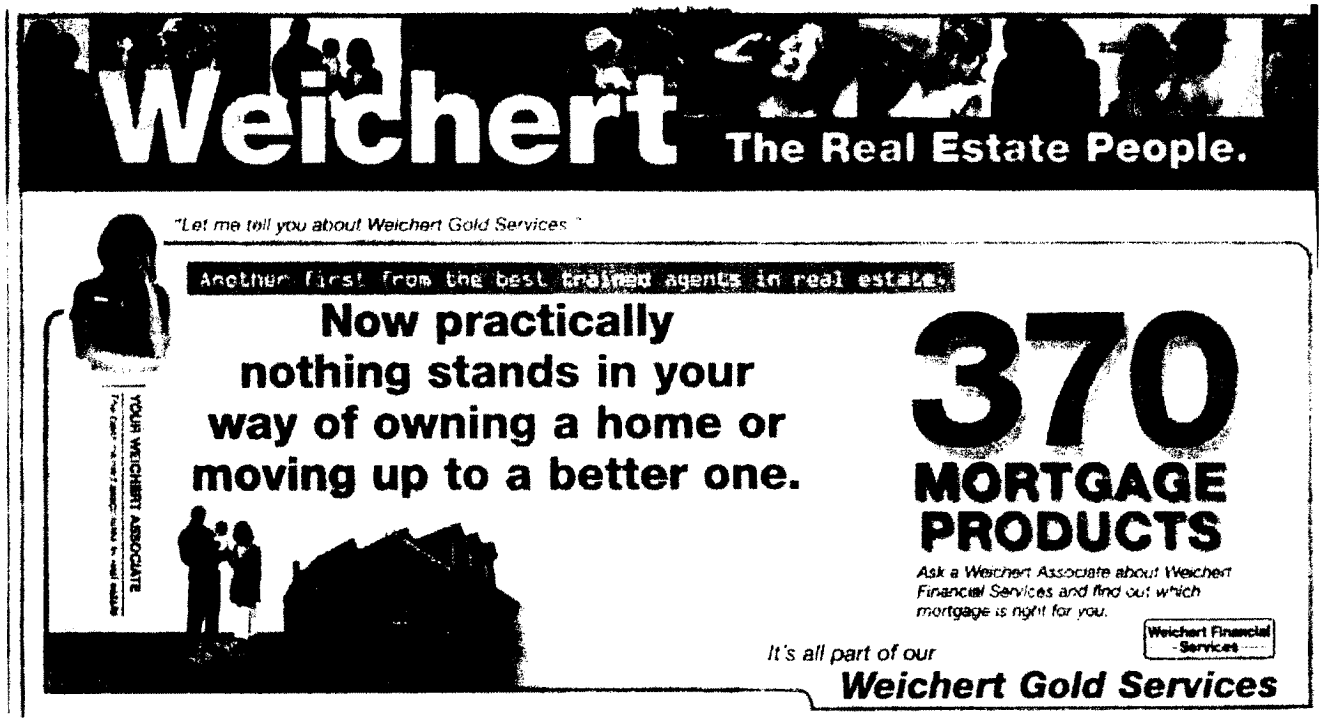
$25,000	4,375
$30,000	5,250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