AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

PROTECTING CONSUMERS AND PROMOTING COMPETITION IN REAL ESTATE SERVICES

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JUNE 15, 2005

Printed for the use of the Committee on Financial Services

Serial No. 109–37

U.S. GOVERNMENT PRINTING OFFICE

29–455 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

HOUSE COMMITTEE ON FINANCIAL SERVICES

MICHAEL G. OXLEY, Ohio, *Chairman*

JAMES A. LEACH, Iowa
RICHARD H. BAKER, Louisiana
DEBORAH PRYCE, Ohio
SPENCER BACHUS, Alabama
MICHAEL N. CASTLE, Delaware
EDWARD R. ROYCE, California
FRANK D. LUCAS, Oklahoma
ROBERT W. NEY, Ohio
SUE W. KELLY, New York, *Vice Chair*
RON PAUL, Texas
PAUL E. GILLMOR, Ohio
JIM RYUN, Kansas
STEVEN C. LATOURETTE, Ohio
DONALD A. MANZULLO, Illinois
WALTER B. JONES, JR., North Carolina
JUDY BIGGERT, Illinois
CHRISTOPHER SHAYS, Connecticut
VITO FOSSELLA, New York
GARY G. MILLER, California
PATRICK J. TIBERI, Ohio
MARK R. KENNEDY, Minnesota
TOM FEENEY, Florida
JEB HENSARLING, Texas
SCOTT GARRETT, New Jersey
GINNY BROWN-WAITE, Florida
J. GRESHAM BARRETT, South Carolina
KATHERINE HARRIS, Florida
RICK RENZI, Arizona
JIM GERLACH, Pennsylvania
STEVAN PEARCE, New Mexico
RANDY NEUGEBAUER, Texas
TOM PRICE, Georgia
MICHAEL G. FITZPATRICK, Pennsylvania
GEOFF DAVIS, Kentucky
PATRICK T. MCHENRY, North Carolina
JOHN CAMPBELL, California

BARNEY FRANK, Massachusetts
PAUL E. KANJORSKI, Pennsylvania
MAXINE WATERS, California
CAROLYN B. MALONEY, New York
LUIS V. GUTIERREZ, Illinois
NYDIA M. VELÁZQUEZ, New York
MELVIN L. WATT, North Carolina
GARY L. ACKERMAN, New York
DARLENE HOOLEY, Oregon
JULIA CARSON, Indiana
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
BARBARA LEE, California
DENNIS MOORE, Kansas
MICHAEL E. CAPUANO, Massachusetts
HAROLD E. FORD, JR., Tennessee
RUBÉN HINOJOSA, Texas
JOSEPH CROWLEY, New York
WM. LACY CLAY, Missouri
STEVE ISRAEL, New York
CAROLYN MCCARTHY, New York
JOE BACA, California
JIM MATHESON, Utah
STEPHEN F. LYNCH, Massachusetts
BRAD MILLER, North Carolina
DAVID SCOTT, Georgia
ARTUR DAVIS, Alabama
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
MELISSA L. BEAN, Illinois
DEBBIE WASSERMAN SCHULTZ, Florida
GWEN MOORE, Wisconsin,

BERNARD SANDERS, Vermont

ROBERT U. FOSTER, III, *Staff Director*

CONTENTS

	Page
Hearing held on:	
June 15, 2005	1
Appendix:	
June 15, 2005	53

WITNESSES

WEDNESDAY, JUNE 15, 2005

Bliley, Hon. Thomas J., former Chairman, Committee on Commerce, U.S. House of Representatives	11
Gramm, Hon. Phil, former Chairman, Committee on Banking, Finance, and Urban Affairs, U.S. Senate, delivered by Hon. Jeb Hensarling	5
Leach, Hon. James A., former Chairman, Committee on Banking and Financial Services, U.S. House of Representatives	8
Duke, Elizabeth A., Chairman, American Bankers Association	15
Eastment, George T. III, President, Long and Foster Financial Services on behalf of the Real Estate Services Providers Council, Inc.	19
Mansell, Al, President, National Association of Realtors	17

APPENDIX

Prepared statements:	
Oxley, Hon. Michael G.	54
Baker, Hon. Richard H.	57
Bliley, Hon. Thomas J.	65
Gramm, Hon. Phil	106
Kanjorski, Hon. Paul E.	60
Leach, Hon. James A.	61
Duke, Elizabeth A.	71
Eastment, George T. III,	95
Mansell, Al	112

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Oxley, Hon. Michael G.:	
Covington & Burling memo to American Bankers Association	126
Kanjorski, Hon. Paul E.:	
Real estate market share chart	140
American Bankers Association:	
Written responses to questions from Hon. Ginny Brown-Waite	143
Written responses to questions from Hon. Stevan Pearce	151
National Association of Realtors:	
Written responses to questions from Hon. Stevan Pearce	147

PROTECTING CONSUMERS AND PROMOTING COMPETITION IN REAL ESTATE SERVICES

Wednesday, June 15, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., in Room 2128, Rayburn House Office Building, Hon. Michael Oxley [chairman of the committee] presiding.

Present: Representatives Oxley, Leach, Baker, Pryce, Bachus, Castle, Lucas, Gillmor, Ryun, Biggert, Miller of California, Tiberi, Kennedy, Feeney, Hensarling, Brown-Waite, Renzi, Pearce, Neugebauer, Davis of Kentucky, McHenry, Frank, Kanjorski, Waters, Maloney, Gutierrez, Velazquez, Watt, Hooley, Sherman, Meeks, Lee, Moore of Kansas, Hinojosa, Crowley, Clay, Israel, Baca, Matheson, Lynch, Miller of North Carolina, Scott, Davis of Alabama, Green, Cleaver, Bean, Wasserman Schultz, and Moore of Wisconsin.

The CHAIRMAN. Good morning. The committee will come to order.

We have the honor of receiving testimony from the authors of one of the most significant pieces of financial legislation ever enacted by any Congress, the Gramm-Leach-Bliley Act, which repealed anti-competitive restrictions on our financial services industry that had been in statute since the Great Depression.

These gentlemen have agreed to come before the committee this morning to explain the intent of this act and to highlight the reasons particular provisions were drafted in the manner that they were. Unfortunately, Chairman Gramm was unable to join us as he is tending to matters in Europe. In his place, however, I would like to thank our good friend and colleague, Representative Hensarling, a member of Chairman Gramm's staff in a former life, for agreeing to deliver Chairman Gramm's comments for the record.

The Gramm-Leach-Bliley Act permitted financial holding companies to engage in activities that are financial in nature or incidental or complementary to the offering of financial services. The effect of this landmark legislation was that banking, insurance and security services could for the very first time be offered by a single entity. This act modernized our financial industry and did away with artificial barriers to competition in these markets.

In their wisdom, the authors understood that the financial marketplace was an evolving one and that if this legislation was to stand the test of time it would have to be periodically updated. This flexibility was built into the act through a provision that permitted the Treasury Department and the Federal Reserve Board to

determine, through the rulemaking process, that other activities are financial in nature or incidental to such activities.

In 2001, the Federal Reserve Board and the Treasury Department exercised their authority under Gramm-Leach-Bliley by issuing a proposed regulation defining real estate brokerage and management services as financial in nature. The agencies have never been able to finalize their rule, however, because provisions have been inserted in every appropriations bill since 2001 at the behest of the National Association of Realtors prohibiting the Treasury Department from expending any funds to implement that regulation. I, along with the Ranking Member of the committee, have consistently objected to legislating on appropriations bills in this manner.

To that end, the Ranking Member, Mr. Frank, and I have introduced legislation, H.R. 2660, which would amend the Bank Holding Company Act to state that real estate brokerage and management services are financial in nature. I regret that it has come to this, but this committee cannot sit idly by while the appropriators run roughshod over our jurisdiction and single-handedly frustrate the objective of financial modernization that the distinguished members of our first panel worked so long and hard to achieve.

We will hear the arguments today that the offering of real estate brokerage and management services was specifically excluded under Gramm-Leach-Bliley because these services are commercial, not financial, in nature. The fact is that there is nothing in the act or in the legislative history of the act which speaks to the issue of real estate brokerage or management. On the contrary, while the act specifically prohibits bank subsidiaries from engaging in real estate development and investment, it is utterly silent on the separate issues of real estate brokerage and management.

Moreover, particularly with housing prices at record levels, the purchase of residential real estate is for most Americans the most significant financial transaction that they will ever undertake. It is a transaction that often involves highly sophisticated financial instruments to finance it, and the vast majority of Americans' net worth resides in the value of their homes.

Additionally, credit unions, thrift institutions and State-chartered banks in over one-half of the States have long been permitted to offer real estate brokerage services. Excluding one class of depository institutions—national banks—from being able to compete on that same playing field is inconsistent with the goals of the Gramm-Leach-Bliley Act and with the fundamental principles that should govern free market economies.

Indeed, free market competition is the hallmark of growth and innovation in our country. Man-made barriers to entry into markets result in monopolies that set the terms of the market and dictate the price. That is what we have today with regard to real estate. The consumer will benefit if free market principles are applied to real estate brokerage and management. Lower prices, improved services and greater access to affordable housing will be the result.

Regardless of whether banks are eventually permitted to provide real estate brokerage, Congress needs a better understanding of whether the current rules for residential real estate brokerage are

in the best interests of consumers. Few people understand how the NAR functions as a self-regulating organization. If its rules promote competition and consumers, why is the Justice Department suing the NAR over its rules blocking Internet brokers from displaying homes for sale on their Web sites? How are these rules consistent with a broker's fiduciary duty to the home seller?

Furthermore, what is the relationship between the NAR and State realtor associations? Could it possibly be in the interest of consumers for State realtor associations to ask State legislators and realty commissions to adopt requirements preventing realtors from rebating part of their fees to consumers or preventing consumers from choosing low-cost discount brokers? The Justice Department is suing the Kentucky Real Estate Commission over just such rules.

On March 15th, Ranking Member Frank and I wrote to the Government Accountability Office asking it to survey the state of price competition in the market for real estate brokerage services. This follows my GAO request last November on whether there are barriers to electronic commerce in real estate. We need to look broadly at consumer protections for home buyers and sellers and this committee will continue to do so.

Let's forget about fighting among the various lobbyists and remember what is really important, and that is how we can get home buyers the best real estate services at the lowest possible prices. Competition is always the answer to that basic question. Choice is always the answer to that basic question. There is not enough competition in these real estate markets and that is what we seek to remedy.

I look forward to hearing from the witnesses regarding the intent of Gramm-Leach-Bliley and the impact the increased competition could have on the marketplace and on consumers.

I now recognize the gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

This is an institution where precedent counts for something. I trust you have set on in the fact that our colleague Mr. Hensarling is here to represent former Senator Gramm. Then-Congressman Gramm came to this institution about the same time that you and I did, 25 or more years ago. I like this precedent of our being able to designate a significantly younger surrogate and I trust it will be from time to time extended on a broader basis for those of us from that generation.

I am in a situation in this hearing which I have read about, but not had previous experience. To some extent, I think some of us feel like children in a custody dispute, being asked to choose between mother and father. I value the contributions that realtors individually and the National Association of Realtors and the Massachusetts realtors have made in public policy. They have been, in my judgment, effective advocates for housing policies.

When we did the question of credit a couple of years ago, the realtors were in my recollection among the most effective advocates of the consumer position. They understood the unfairness of arbitrary credit rulings which would have kept consumers from being able to buy housing. So I value that relationship.

In my particular case, sponsoring this bill is not any indication of dissatisfaction with or unhappiness with realtors and the service they perform, but one very specific disagreement. I have generally taken the position that competition is a good thing. Unlike a lot of my colleagues early in the 1980's, I was an advocate of repealing Glass-Steagall. It seemed to me it had been undermined substantially by technology, but I also think that the notion of competition is a good one.

One of the metaphors we hear frequently discussed in America is that of the level playing field. We have a very interesting economic and physical phenomenon that is, as I listen to various businesses, every business, every single business in the financial services field, every single one of them is at a disadvantage to its competitors. We have what we would call in economics a constantly downwardly sloping playing field. I have never met a business that received any advantage in the law, only disadvantages. How that is possible, I do not entirely comprehend, but simply empirically I must report to you that that is what we are told.

I have generally tried to promote competition. Now, I understand the concern and we have heard it from the realtors; we have heard it even more vigorously when we were dealing with this legislation from people in the securities industry, namely that the ability of the banks to make loans would give them leverage and they could tie that to other transactions and therefore get people to do business with them in other areas because of the fear that they would not get loans. I think it was incumbent upon us to look very closely at that.

I have to say that the evidence I have seen so far does not show such a pattern. It is a legitimate concern, but it is certainly not allowed under the law and there are restrictions on it. In my own State of Massachusetts, banks have been allowed to do real estate brokerage. It is not my understanding that they have widely taken advantage of that. But I do want to make clear, to me this is a difference between two groups of very constructive participants in our financial system, both of whose work I value, both of whom make important contributions, both in particular to the consumers they serve and to the economy in general. In this particular case, I do think we are served better by competition with the constant need to impose restrictions against illegal tying.

So with that, I am ready. I will apologize in advance. There is a constituent of mine who has been very unjustly imprisoned in the Peoples Republic of China. At 11:15, the new Ambassador from China will be in my office to discuss that. Having secured the appointment, I was not in a position to change it around, so I will be absenting myself. But I do want to again reiterate that for me this is a specific disagreement, particularly with regard to the realtors, with an organization and a structure that I think plays a very constructive role. It is in that context that I hope this goes forward.

The CHAIRMAN. The gentleman's time has expired.

The Chair would indicate all members' opening statements will be made part of the record.

We would like to now turn to our distinguished panel.

Without objection, the first panel will be excused after giving their statements so we can get to the second panel.

Our first witness is the gentleman from Texas, Mr. Hensarling, testifying on behalf of Senator Gramm.

STATEMENT OF HON. PHIL GRAMM, A FORMER SENATOR IN CONGRESS FROM THE STATE OF TEXAS, FORMER CHAIRMAN, COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS, U.S. SENATE, DELIVERED BY HON. JEB HENSARLING

Mr. HENSARLING. Thank you, Mr. Chairman.

Let me also thank you and my dear friend and mentor, Senator Phil Gramm, for asking me to read his testimony into the record.

If I can make two observations, the testimony of Senator Gramm does not necessarily reflect that of his current employer and does not necessarily reflect my own views. Secondly, although the testimony is most insightful, it is not necessarily brief, Mr. Chairman.

With that, I shall begin.

Chairman Oxley, Ranking Member Frank and members of the committee, thank you very much for the invitation to testify before your committee today.

Before continuing, Mr. Chairman, let me commend you and your colleagues for the leadership you exhibit on various issues within this committee's jurisdiction. The past several years have been marked by events affecting the delivery of financial services to consumer investors, financial accounting and transparency, and the review of numerous issues arising from the implementation of the Sarbanes-Oxley Act.

Under your leadership, this committee has exercised the highest standard of congressional oversight. So while the distance between our offices is now more than just across the Capitol Plaza, I remain keenly interested in your work and commend you for your diligence in protecting the public interest. The hearing you hold today is yet another example of this committee's untiring efforts to address significant public policy issues.

The subject of today's hearing focuses on some of the most important provisions of the Gramm-Leach-Bliley Act, known as "the act," clearly provisions serving as one of the pillars of financial reform, as my esteemed former colleagues, Chairmen Leach and Bliley will I think agree. Without the expansion of permissible financial activities, the removal of barriers to affiliation under the act is rendered meaningless. These provisions were topics of thorough debate and consideration and numerous meetings at which Chairmen Leach, Bliley and I were participants in 1999.

I also must acknowledge the contributions of then-Ranking Member LaFalce. I am confident that Jim and Tom will agree with me that the final agreement of the conferees reached in this very room in late-October, 1999 evokes poignant, if not fond, memories. The agreement was announced by Chairman Leach and agreed to by all conferees, followed by a swift gavel signifying the conclusion of our proceedings at about 3 a.m. Upon reflection, I am inclined to believe that Chairman Leach quickly gaveled the conclusion of that meeting, not because of the lateness of the hour, but before anyone could have a change of heart.

As a preliminary matter, let me be clear that my testimony solely reflects my personal views and not necessarily those of my current employer or fellow employees.

Under the act, the Federal Reserve Board was granted umbrella regulatory powers over financial holding companies. The expended powers under the act may be engaged in by qualifying FHCs and by financial subsidiaries of national banks. The act reflects the wisdom of the Congress that none of us serving at the time could see into the future or judge what the full scope of financial activities would or should encompass. Rather, the act amended the Bank Holding Company Act and the revised statutes to create a process by which the list of financial activities could and would be expanded.

I recall that in testimony before the Senate Banking Committee and before the then-House Banking Committee, Federal Reserve Board Chairman Alan Greenspan observed that the landscape of financial activities would change dramatically over the ensuing 5 to 10 years. We are now 6 years into that forecast. I believe that Chairman Greenspan's observation is accurate. I remain convinced that the Bank Holding Company Act and the revised statutes, both as amended by the Gramm-Leach-Bliley Act, create the proper framework for the determination of financial activities.

Specifically, the act created new subsections K through O of section four of the Bank Holding Company Act addressing generally the following: financial activities; coordination between the Federal Reserve Board and the Secretary of Treasury; conditions for engaging in financial activities; conditions applicable for failure to meet certain requirements; and the retention of limited non-financial activities and affiliations.

While new subsection 4(k)(4) enumerates activities determined to be financial in nature, section 4(k)(2) establishes a process of coordination and cooperation between the Federal Reserve Board and the Secretary of Treasury, allowing them to determine jointly that an activity is financial in nature or incidental to a financial activity and therefore permissible for FHCs. Neither agency may determine that an activity is financial in nature or incidental to a financial activity if the other agency indicates in writing that an activity is not financial in nature, not incidental to a financial activity, or not otherwise permissible.

Section 121 of the act creates a parallel provision for the Secretary of Treasury to determine new financial activities or activities incidental to such activities for financial subsidiaries of national banks. Section 4(k)(3) requires the Federal Reserve Board to take into consideration certain factors in determining whether an activity is financial in nature or incidental to a financial activity.

Generally, the four factors specified in the law require the Federal Reserve Board to take into account the purposes of the Bank Holding Company Act and the act; changes or reasonably expected changes in the marketplace in which FHCs compete; changes or reasonably expected changes in the technology for delivering financial services; and whether the activity is necessary or appropriate to allow an FHC and its affiliates to compete effectively with any company seeking to provide financial services in the United States; efficiently deliver information and services that are financial in nature through the use of technological means; and offer customers available or emerging technological means for using financial services or for the document imaging of data.

The act, at section 121, addresses the establishment of financial subsidiaries of national banks and establishes the same factors for consideration by the Secretary of Treasury for determining whether certain activities are financial in nature or incidental to such activities, and therefore permissible for the financial subsidiaries of national banks. Pursuant to section 4(k)(2) and section 5136(a), third parties are permitted to request that the Federal Reserve Board or the Secretary of Treasury determine that any activity is financial in nature or incidental to a financial activity.

Acting under these provisions in December 2000, the agencies received a request for a determination that real estate brokerage and real estate management are financial activities. The agencies came to agreement that such activities are financial in nature. On January 3, 2001, they issued a joint proposed rule seeking public comment. Under the joint proposed rule, real estate brokerage is defined to mean acting as agent in a real estate transaction; listing and advertising real estate; providing advice in connection with a real estate purchase, sale, exchange, lease or rental; bringing parties together and negotiating on behalf of such parties.

FHCs and financial subsidiaries would not be permitted to invest in or develop real estate as principal, or take any financial interest in real estate that they broker. Under the joint proposed rule, real estate management generally is defined to mean procuring tenants, negotiating leases, maintaining security deposits, billing and collecting rent payments, and inspecting and maintaining real estate. FHCs and financial subsidiaries would not be permitted to acquire a financial interest in real estate managed or directly repair or maintain real estate managed.

Nothing in the act expressly or impliedly deems real estate brokerage or management activities to be impermissible for determination as financial activities. The only real estate-related activities expressly mentioned are those at section 121 of the act. In that section, financial subsidiaries of national banks are prohibited from engaging in "real estate development or real estate investment activities unless otherwise expressly authorized by law." Section 121 was the product of careful negotiation over a substantial period prior to its acceptance at a meeting of the conferees held in the Capitol in the fall of 1999.

Thus, it appears that the agencies properly exercised their authority under the Bank Holding Company Act and the revised statutes to determine that real estate brokerage and real estate management are financial activities and to solicit public comments on the contours of their proposed regulation. It is my understanding that the process has not been completed since it was initiated in 2001.

It took Congress approximately 9 months to complete its work on the Gramm-Leach-Bliley Act, working with the Federal financial regulators, representatives of public interest groups, industry and certain State regulatory authorities. This, however, followed some 6 decades of debate on the need for reforms to update our banking laws. The method established under the act for determining financial activities and activities incidental to financial activities was one arrived at after lengthy negotiations. In order for our financial industry to remain competitive domestically and globally, our stat-

utory and regulatory regimes must be able to respond to changing market dynamics and to do so quickly and effectively.

When we decided in 1999 upon the method for determining new financial activities going forward, we agreed to do so on the basis that it was imprudent to create a static, fixed definition in the law for permissible financial activities. Instead, we provided flexibility for the Federal Reserve Board and the Treasury to initiate their own proposals or to consider proposals from third parties for new financial activities.

It is my hope that we can rely upon this framework and that it can be a sound and fair basis upon which our financial institutions evolve. The rulemaking process contains procedural safeguards, transparency and the opportunity for public comment. Hopefully, section 4(k) of the Bank Holding Company Act and section 5136(a) of the revised statutes will not become empty provisions of the law, but will be utilized to serve the interests of a competitive industry, the consumers of financial products and services, and the safety and soundness considerations of our financial regulators.

Thank you again, Mr. Chairman, Ranking Member Frank and members of this committee, for the courtesy of your invitation and for your interest in my views.

Mr. Chairman, that completes Senator Gramm's testimony.

[The prepared statement of Mr. Gramm can be found on page 106 of the appendix.]

The CHAIRMAN. Thank you. And I thank Chairman Gramm for his excellent testimony and your presentation of same.

We now turn to the middle of the Gramm-Leach-Bliley provision, our good friend and the former chairman of this committee, Congressman Leach.

STATEMENT OF HON. JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, FORMER CHAIRMAN, COMMITTEE ON BANKING AND FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES

Mr. LEACH. Thank you very much, Mr. Chairman and Mr. Frank, distinguished colleagues. I apologize I do not have a written statement, so I would request unanimous consent to revise and extend.

The CHAIRMAN. Without objection.

Mr. LEACH. The background, Mr. Chairman, for consideration of financial modernization legislation, what came to be called Gramm-Leach-Bliley, was competition between various private sector industries; competition within each of these industries; and competition between regulators of various entities. At issue today is a review of how Gramm-Leach-Bliley addresses the real estate issue. The subject surprisingly involves all three of the above-cited competitions.

For instance, there is an obvious competition or potential competition between financial holding companies, banks and realtors, perhaps exaggerated because a few banking institutions are either desirous or good at offering real estate brokerage services. This is evidenced by competition within the banking industry itself.

A number of States, such as my own, for a number of years have given State banks real estate brokerage powers. Few banks nationwide have made much of a dent in the market, in part because real

estate brokerage activities are so competitive and in part because real estate brokering is anti-bank in culture. That is, real estate brokers are on the hoof; bankers prefer the shelter of brick walls. The two cultures do not well mix.

Interestingly, however, a number of States have laws that automatically give State banks any powers a national bank has authorized, but there is no reverse law. That is why in the regulatory competition between State and national banks, the national bank regulator, the OCC, has a strong bent to attempt through regulation to give national banks whatever powers any State authorizes and if possible more authorities.

Therefore with regard to garnering consensus support for bank modernization legislation, a number of the non-bank groups relented in opposition to opening up competition between the three principal industries, that is banking, securities and insurance, because the OCC had been making concerted efforts to unilaterally empower banks.

The law in its final format was equalitarian, that is, Gramm-Leach-Bliley. Powers granted banks were also accorded securities firms and insurance companies. Competition, not turf protection, was the aim of the legislation. But we should be clear that the OCC activism was part and parcel of everything that had to do with garnering support for passage of bank modernization.

Even though there appeared under prior law to be a more constraining standard of flexibility for regulatory power-granting, i.e., bank affiliates could only engage in activities closely related to banking, the OCC had begun to use a Supreme Court administrative law precedent called the Chevron case, which suggested that courts should give deference to Federal regulators as long as they did not operate capriciously to expand the powers of national banks.

Given the State precedents on real estate brokerage activities, it was widely assumed that the OCC would authorize even greater powers for national banks. Indeed, when Gramm-Leach-Bliley was under consideration, the OCC had under consideration a national bank request to allow it to engage in real estate leasing activities as well as certain real estate investment activities.

Therefore, in an industry-balancing scenario, what Gramm-Leach-Bliley did for the real estate industry was to statutorily proscribe banks from using federally insured deposit advantages for real estate investment and development. This was done in the context of the philosophical struggle then underway about the bill, whether commerce and banking should be breached itself.

I want to diverge for a second on this subject for a couple of reasons. One is the import of the issue; and two, that the real estate industry played such a major role in consideration of the issue. That is, when Gramm-Leach-Bliley was under review, a large number of members of this committee, the majority of the leaders of both houses of Congress and of both parties in Congress, wanted to do a complete lifting of the ban between commerce and banking.

What was at issue, in my view, was whether or not we would develop a system similar to Japan and Korea, that is to have what the Koreans called chaebols and what the Japanese called keiretsus; or what was the system in place in a country like Spain

which involved the integration of commerce and banking. Whether, for instance, Citicorp could merge with Amoco and Wal-Mart, and whether this would be good for the economy or not.

The realtors held, as I did, that this would be a mistake and that it would radically change the whole system of American finance, as it would change the whole nature of the real estate industry. As it worked out, and partly because bankers backed off a little bit in partial measure because in my view there are only 200 to 300 Americans that actively wanted this, and they were all in large-bank boardrooms and investment bank boardrooms. But the interesting phenomenon was that no bank in America, with the exception of one, was in the top 20 of American corporations in asset value based on stock exchange valuation, that is, market valuation.

It was my belief, and I wrote the heads of every bank in America, that if this provision passed, in short order Chase and Citicorp would not be taking over the world. They would be the first to be taken over; that Amoco, Wal-Mart, etc., would buy out Chase and Citicorp and that the big banks would be the most vulnerable institutions in America to losing their independence. This view came to be talked about rather widely in the higher echelons of finance. I can only suggest to you the difficulty would have happened. At that time, Enron had a greater market capitalization than any bank in the United States of America. MCI-WorldCom had a greater valuation than all but one.

The point is, I think all of these institutions would have taken over banks, and what would that have meant when these companies got in difficulty? I think it would have been a rather difficult scenario for the United States.

I raise this in this context because the realtors, like others in American commerce, but the realtors more than anyone that I know of paid attention to this issue. They were adamantly opposed to mixing commerce and banking. It is no accident that they did not object to this bill's passage. They understood that they were worse off without a bill and they would have been much worse off with a bill that was designed in a very different way.

Finally, in terms of legislative history, the committee of jurisdiction chose to prohibit banks from engaging in real estate development investment, but allowed the legislation to be silent on brokerage activities. This was not an oversight. The first comprehensive version of Glass-Steagall reform that I introduced as chairman of the Banking Committee did reference the brokerage issue.

But the banking community persuasively pointed out to committee members that not only was banking evolving, but so was the way real estate brokers conducted business. The banking industry argued that because sophisticated real estate brokers were also providing credit to clients by offering mortgage banking services themselves, it did not seem balanced to not allow or at least not preclude bankers from entering the business.

The committee thus chose not to tilt in any direction on the issue and left decision-making up to the professional regulators. As one of the authors of the legislation, I have taken the position not to endorse any approach or give regulators any post-legislative advice. The law was intended to be flexible, adjusting to new times and new ways without congressional prejudice.

Finally, a note about the regulatory competition. Gramm-Leach-Bliley was intended to seal the gaps of regulation by not only ensconcing functional regulation, but by establishing a primary regulator so accountability could not be ducked. It was also designed to make regulation more seamless and less competitive. On this issue, for instance, the Fed and the Treasury have shared authority so that the OCC, which regulates national banks and the Fed which regulates State banks as well as holding companies, apply together consensus judgment. From the real estate industry perspective, this was considered a significant plus.

In conclusion, let me stress that the Gramm-Leach-Bliley Act was the product of many years of legislative debate. The final legislation was designed to ensure that the evolution of the financial services industry would not be impeded by protracted congressional interference. The process of defining new powers for banks and financial holding companies was by intent de-politicized under the act.

In America, process is our most important product. It is process as much as outcome which Gramm-Leach-Bliley is about. In this case, the silence of the act on real estate brokerage activities makes it subject to review by regulators. This review, however, should not be one which assumes a congressional bias on result. There is nothing in the hearing record or report language which indicates the direction regulators should take, with the exception that any judgment of regulators would presumably have to accommodate anti-tying product guidelines.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Chairman. We appreciate your testimony.

We now turn to the third witness, my good friend and former chairman of the Energy and Commerce Committee, the gentleman from Richmond.

Mr. Bliley, good to have you back.

STATEMENT OF HON. THOMAS J. BLILEY, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, FORMER CHAIRMAN, COMMITTEE ON COMMERCE, U.S. HOUSE OF REPRESENTATIVES

Mr. BLILEY. Thank you, Mr. Chairman.

Chairman Oxley, Ranking Member Frank and members of the committee, thank you for inviting me here today to offer my views on consumer protection and competition in real estate services. It is good to see so many old friends, but let me assure those old friends that while much has changed in the 4 1/2 years since I left Congress, I have not lost my fondness for brevity.

The enactment of the Gramm-Leach-Bliley financial modernization law in 1999 was a singular event in the Nation's financial history. It did away with many of the rules and regulations that hampered economic growth in the financial services industry. One of, if not the, central aspects of the act was the creation of a new category of financial institutions known as financial holding companies, FHCs, the logical successors to simple holding companies under the Bank Holding Company Act.

These new FHCs were given the authority to engage in a full range of activities; that is, "activities that are financial in nature or incidental to financial activity." That was impermissible under Glass-Steagall. As our committee report said in 1999, permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking.

Gramm-Leach-Bliley was supposed to put to final rest the issue of bank agency powers. Congressman Leach and I had numerous discussions in various forums on the mixing of banking and commerce. The collective wisdom of Congress in Gramm-Leach-Bliley was to generally prohibit any mixture of commerce and banking, to strictly limit certain activities with a significant underwriting risk, such as insurance underwriting and real estate development, and to allow banking competition in agency and brokerage activities.

There is a reason that Congress specifically walled off real estate development investment. It is not that we forgot about real estate brokerage or had never heard from the realtors. No, we intentionally drew the line at financial activities that put bank capital at risk, while leaving brokerage activities open, fully expecting that real estate brokerage would ultimately be part of that group. This was a careful compromise as we went from allowing a basket of bank commercial activities to walling off each activity Congress did not want banks to engage in.

In fact, Gramm-Leach-Bliley specifically directed the Federal Reserve Board and Treasury to periodically bring in new activities that are financial in nature or incidental to a financial activity, for example, because such activity is necessary or appropriate to allow a financial holding company to compete effectively with any company seeking to provide financial services in the United States. We knew it was coming and created the mechanism to keep the system dynamic. We could have outlawed any number of other activities. We did not. That is largely because we did not want the act to become outdated before the conference report was even signed.

In an era of amazing technological innovation and change, we consciously chose to make the law flexible, to allow the functional regulators with appropriate statutory guidance to define what specific activities should be permissible.

Thank you, Mr. Chairman, for the opportunity to be here today. I also want to thank you and the other members of the committee for seeking to uphold the deregulatory intent of Gramm-Leach-Bliley.

[The prepared statement of Mr. Bliley can be found on page 65 of the appendix.]

The CHAIRMAN. Thank you, Mr. Chairman.

And thanks to all of the witnesses.

This is a rather unique hearing in that we have had an opportunity to hear from the authors of this historic legislation. Having participated in this as a subcommittee chairman under Chairman Bliley through the markup and through the conference, it is good to lay the predicate for this historic legislation as viewed by the authors.

It is not very often that we have that opportunity to hear from such three distinguished witnesses as these authors. I want to thank you.

The gentleman from Massachusetts?

Mr. FRANK. I would just say people I think will be looking forward to 10 years from now when you and Senator Sarbanes play a similar role to even greater interest.

The CHAIRMAN. Thank you all, gentlemen. Dismissed.

While the other panel is getting set up, I would want to recognize the gentleman from Alabama for an opening statement as subcommittee chairman, and then Mr. Kanjorski.

The gentleman from Alabama?

Mr. BACHUS. Thank you, Chairman, for convening this important hearing.

Obviously what precipitated this hearing was the bank regulators' finding that real estate brokerage and management was a financial activity or was incident to a financial activity.

Mr. FRANK. Would the gentleman suspend? Could people finish their business? We have someone speaking here. Can we delay some of this fussing around until Mr. Bachus is finished? It can really all wait until Mr. Bachus is finished.

Mr. BACHUS. I will start over.

Of course, the genesis of this hearing was the Treasury and the Federal Reserve making a finding that real estate brokerage and management was financial in nature, as opposed to commercial, I would suppose, because Gramm-Leach-Bliley in my mind kept the longstanding separation between commercial activities and financial activities. So to find real estate brokerage and management as permitted under the Gramm-Leach-Bliley, they would have to find that it was financial in nature, as opposed to commercial, I would think, or incidental thereto.

I think you can make arguments on both sides of that issue. I think that the proper place to debate these issues is not in the appropriations process. It is in this committee. So I think that we are in the proper forum. I applaud the chairman for having this hearing. I am also aware that the majority of this Congress, the majority of the members of this Congress have introduced legislation, I think Mr. Calvert and Mr. Kanjorski introduced it, taking a position that real estate brokerage and management should not be permitted. I know the chairman of the full committee, and I have respect for his opinion, he has introduced legislation to reaffirm the determination of the Fed and the Treasury.

Obviously, on record the majority of the members of this Congress have expressed reservations over allowing financial institutions or holding companies to participate in a real estate brokerage and management. So whatever the intent of Gramm-Leach-Bliley, and I will say this, I have looked at the bill. I have looked at the committee reports. I have looked at the debate on the floor and in this committee. It is silent on it.

So if in fact there was an understanding that it would include real estate management and brokerage, the absence of any referral to that in the record, or in the legislation, particularly in that it is such an important industry, to me is sort of puzzling; that it would not be anywhere in the record, and in fact they did address

real estate investment, and specifically excluded and walled that off.

I will say this. I do not think it is a given that the Federal Reserve and the Treasury had the right to say this is financial in nature, because to do so they had to determine that it was not commercial in nature. If you determine that buying and selling homes or brokering them is financial and not commercial, where do you end up? I mean, automobile dealerships, where do we go? I think that the intent of Congress, at least in my mind, was to observe the separation.

There are arguments on the other side. There are arguments that State charters permit this, although there is very little of this in practice. On the other hand, banks for decades have engaged in real estate management through their trust departments, and have managed assets under their supervision. I do believe that something this important ought to be addressed by this committee and that really in fairness if we are going to have legislation, we probably need to have up and down votes on all the legislation since this is a democratic body.

But I look forward to hearing this next panel. I will conclude by saying this, the one thing that both parties say is that this will increase competition if we allow it. The banks say it will increase competition. The real estate brokers, the real estate companies, the realtors say it will decrease competition. I do have a problem with saying to an industry that has had so much consolidation. We heard last week that 1 percent of the companies in banks make 70-some percent of the profits. We have had tremendous consolidation in banking, where real estate brokerage is still one of the most competitive businesses, I believe, in America.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Pennsylvania, Mr. Kanjorski?

Mr. KANJORSKI. Thank you, Mr. Chairman, for convening this hearing on the pending regulatory and legislative proposals affecting real estate brokerage and management.

Although I, like you, want to resolve these important matters, we have very different views on the appropriate solution. 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 consideration of this groundbreaking law, I very strongly supported maintaining the firewall separating the financial and commercial sectors. To underscore our concerns about the integration of banking and commerce, the 1999 law also specifically banned financial institutions from entering real estate development and investment services.

Although real estate management and brokerage represent nonfinancial commercial activities, in one of their first acts of interpreting the Gramm-Leach-Bliley Act, regulators unfortunately issued an ill-conceived rule proposal that would allow national bank holding companies and their subsidiaries to engage in these pursuits.

Because this proposal greatly concerned me, I began working to draft the Community Choice in Real Estate Act which I introduced, along with Congressman Ken Calvert. Our legislation would explicitly prohibit national bank holding companies and their subsidiaries from engaging in real estate brokerage and management. We first introduced the Community Choice in Real Estate Act in the 107th Congress. We also reintroduced the bill in the 108th Congress and the 109th Congress. In every Congress since its introduction, our bill has gained the support of a bipartisan majority of the House. In the 109th Congress, for example, 238 members of the House have already backed H.R. 111 and we continue to add a few more cosponsors almost every week.

Some parties involved in these longstanding debates have recently begun to suggest that we need to consider a compromise to resolve these matters. I can neither support a compromise that would fracture the firewall between banking and commerce, nor an arrangement that would undermine the leadership that our local communities generally need.

Moreover, we should refrain from engaging in a lengthy and contentious debate on other legislative proposals in this area or yet-to-be-developed compromises. We should instead consider H.R. 111 as quickly as possible. The Community Choice in Real Estate Act already has the support of a majority in the House. It is the solution that my colleagues are ready to accept.

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 very strongly hope that we will therefore approve H.R. 111 before the end of the 109th Congress.

[The prepared statement of Mr. Kanjorski can be found on page 60 of the appendix.]

The CHAIRMAN. The gentleman's time has expired.

We now turn to our panel. Let me introduce the witnesses for today: Ms. Elizabeth A. Duke, chairman of the American Bankers Association; Mr. Al Mansell, president of the National Association of Realtors; and Mr. George T. Eastment, III, president of Long and Foster Financial Services, on behalf of the Real Estate Services Providers Council, Inc.

Ms. Duke, you may begin.

STATEMENT OF MS. ELIZABETH A. DUKE, CHAIRMAN, AMERICAN BANKERS ASSOCIATION

Ms. DUKE. Thank you, Mr. Chairman and also Ranking Member Frank and members of the committee, for inviting me here today. I want to particularly thank you, Mr. Chairman, for holding this hearing.

My name is Betsy Duke. I am executive vice president with Wachovia Bank and current chairman of the American Bankers Association. I believe that the bankers and the realtors have more in common on this issue than the rhetoric suggests. We both believe that customers deserve to have the best possible service and we both want customers to have many choices so that they can seek out the agent or company they trust most.

This is why we believe banks should be allowed to offer real estate services. Consumers would have more choices when buying or selling a home; real estate agents would have more choices of potential employers; and brokerage firms would have more choices of companies to partner with, providing new sources of capital and technology. Increased competition benefits consumers by encouraging innovation and increasing efficiency.

Naturally, added competition would affect the realtors. No business is or should be immune from competition. Banks engaging in real estate services would compete with one another as well, just as they do today for consumers' checking accounts and other banking needs.

To listen to the National Association of Realtors, keeping banks out of the real estate brokerage industry is all about protecting consumers. In reality, their campaign has been about protecting themselves from competition. It is important to note that combining real estate brokerage and banking services is not a new or an unusual activity. Real estate firms do it. Insurance companies do it. Securities firms do it. And more than half the depository institutions in this country, including many of the largest banks, can do it.

Yet banks that cannot offer real estate services lose customers to real estate firms that aggressively offer mortgages and insurance. This is because customers tend to choose mortgages and other products from the businesses that are associated with the first point of contact in the home buying process which is the real estate agent. The packages that many real estate firms offer provide valuable cost, convenience and service options. Such combinations of services are good for consumers and ABA believes that all banks should have the same opportunity to meet the needs of our customers and offer similar products and services, just as the real estate firms do today.

To remove itself from the process of determining who should be able to offer what financial services, Congress in the Gramm-Leach-Bliley Act adopted a process whereby two knowledgeable agencies could make that determination. Realtors would reverse the progress embodied in the Gramm-Leach-Bliley Act and by precedent put Congress back in as the referee for all future competitive disputes. Having worked so hard to develop a mechanism to continually keep our financial system up to date, Congress should not be asked to choose between banks and realtors. This is a choice for consumers to make based on their own unique set of needs and preferences.

Simply put, banking institutions should be allowed to offer real estate brokerage and management services for three key reasons. First, it is good for consumers. It means more choices, better services, competitive prices and greater convenience. Competition stimulates innovation and encourages effective uses of technology to better serve consumers.

Second, it is fair. Since real estate firms offer banking and insurance services, it is 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.

Finally, it is safe. All consumer protections, including all State licensing, qualification, sales practices and continuing education requirements that apply to realtors today, along with strict privacy laws and anti-tying rules, would apply to all bank-affiliated real estate agents. Because brokerage and management are agency activities, they pose no risk to the bank.

ABA appreciates the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Duke can be found on page 61 of the appendix.]

The CHAIRMAN. Thank you very much.

Mr. Mansell?

STATEMENT OF AL MANSELL, PRESIDENT, NATIONAL ASSOCIATION OF REALTORS

Mr. MANSELL. Thank you very much, Mr. Chairman and Representative Frank, Ranking Member. We appreciate the opportunity of being here today.

My name is Al Mansell. I am the 2005 president of the National Association of Realtors.

Before I begin, I would like to correct one thing that was said earlier, Mr. Chairman, in your statement. That was the fact that we were being sued by the Justice Department. Actually, what has taken place is we have been investigated by the Justice Department for the last 2 years and no action has been taken to date, unless you know something we do not know. I do not know about that, but to the best of our knowledge, we have never been sued.

Let me continue, if I might. I am here today to testify on behalf of our more than 1.2 million members who represent all aspects of the residential and commercial real estate industry, including more than 300,000 real estate companies. I appreciate the opportunity to share our view on the prospect of big banking conglomerates operating real estate brokerage, leasing and property management businesses.

As we have heard today, opinions about the intent of Gramm-Leach-Bliley may differ. To date, 238 members of the House of Representatives and 25 senators have shown they share NAR's opinion by cosponsoring the Community Choice in Real Estate Act. Mr. Chairman, you have introduced legislation that takes an opposing view. I will not spend my time here debating those legitimate differences.

The real issue here is determining what is the mix of commerce and banking. I want to focus more on what likely would happen to consumers, small businesses and the real estate industry if huge banking conglomerates are permitted to enter the real estate business.

America's housing system is working better than ever. We are in our fifth consecutive record-breaking year, with homeownership at the highest rates in history. The real reason this whole issue is before you today is because of that success. It is the same theme, follow the money. We have two very healthy industries, banking having record profits and real estate doing also record business. That continues to drive both our national and local economies. To make

any changes to this vital market demands very careful consideration.

Realtors believe there is no compelling market need to allow banks to enter the real estate business. We believe such a change would have profound negative consequences for consumers, businesses and the economy. Why is this change being considered? Bankers contend that small community banks seek this change so they can better compete with multi-service real estate firms.

However, as the American Bankers Association states in its testimony, one-half of the States already allow their State-chartered banks to own real estate companies. Few of these banks have taken advantage of that authority to operate a real estate business. I believe it currently is in the number 18 in the Nation.

This begs the question. If banks would reduce costs further, why have we not seen a natural growth in banks in real estate in States where this is permitted? In other words, why is this legislation forcing the creation of a market that is not emerging naturally at the State level? NAR believes this is a concentrated plan by large banking conglomerates to gain regulatory and legislative edge in the real estate market.

This is not a new effort. Banks previously have sought to amend the Real Estate Settlement Procedures Act, known as RESPA, in a way that grants them unfair advantages over other service providers. They have sought to limit the abilities of Fannie Mae and Freddie Mac to compete with large banks in the secondary market. I reference the portfolio issue, which is about market share.

They have pressed the Federal Reserve to finalize this rule on real estate to allow banks in the real estate business, and they have succeeded in getting regulators to preempt them, being all the Federal banks, from State consumer protection laws dealing with predatory lending. Now, they say they will abide by all the State licensing and regulatory licensing dealing with real estate at the State level. In the beginning, I am sure that will be true, at least until they persuade the regulator to preempt those laws.

Yes, the largest megabanks will benefit most from an open entry into the real estate business. They will use their size and government-granted advantages to drive out competition. Forcing independent real estate brokers to compete against the federally chartered megabanks would be like asking a cruise ship to compete against the United States Navy in warfare.

NAR asks committee members to look closely at the existing relationship between banks and real estate brokers before you proceed. Contrary to what big banks would have you believe, there is a very efficient and effective process through which consumers buy and sell their homes and obtain financing. In the written statement from the ABA, it states, it mentions that the real estate industry has the ability to provide loans and one-stop shopping. That is in fact true today.

What they did not mention is that this is happening through a joint venture between banks and real estate companies. In other words, these services are being done jointly between the two groups. A good example of this is Prosperity Mortgage Company, a partnership between Wells Fargo and Long and Foster Real Estate. I would reference you about two-thirds back in the written

statement to show, back to that page, which is the Long and Foster/Prosperity Finance page, talking about this, where it also references that this company is a partnership with Wells Fargo.

Also, we have included in our statement a long list of these partnerships. We actually believe this is the proper role; that this gives consumers a very excellent opportunity to have one-stop shopping and also gives banks an opportunity to participate in that as partners with the real estate company to provide the consumers the very best product and opportunities.

The CHAIRMAN. Could you sum up, please?

Mr. MANSELL. Okay.

It appears to us that in the market today when a real estate agent goes out and sells a house to a consumer, 75 percent of those mortgages produced in that transaction go to nonaffiliated mortgage companies. As we have checked around, that seems to be about the number, 75 percent or more go to nonaffiliated mortgage companies.

That means the agents do not use their broker's mortgage company, but rather they go outside because real estate agents uniquely want to do that. I would submit to you that if in fact the banks are allowed into the real estate industry, that will disappear because of the employee relationship that will exist there.

So it is our hope that you will give us an opportunity to have a hearing on H.R. 111 and give us the opportunity to have that voted up or down.

Mr. Chairman, we thank you for the opportunity of being here today.

[The prepared statement of Mr. Mansell can be found on page 112 of the appendix.]

The CHAIRMAN. Thank you, Mr. Mansell.

Mr. Eastment?

STATEMENT OF GEORGE T. EASTMENT III, PRESIDENT, LONG AND FOSTER FINANCIAL SERVICES, ON BEHALF OF THE REAL ESTATE SERVICES PROVIDERS COUNCIL, INC.

Mr. EASTMENT. Good morning, Mr. Chairman and members of the committee. My name, as you have heard, is George Eastment. I am president of Long and Foster Financial Services, a full-service real estate company headquartered in Fairfax, Virginia.

Long and Foster has 230 residential real estate brokerage offices in Virginia, Maryland, West Virginia, Delaware, Pennsylvania, North Carolina, New Jersey and Washington, D.C. We have 17,500 sales associates and employees of which 15,000 are licensed real estate agents. As you have heard, we offer mortgages through Prosperity Mortgage. We have an insurance company that does commercial and personal lines. We also have a title agency for settlements.

Today, I am representing RESPRO, the Real Estate Service Providers Council. RESPRO is a national nonprofit trade association of approximately 260 companies, across industry lines, that united in 1992 to promote an environment that enables providers to offer diversified services to home buyers, better known as one-stop shopping. RESPRO's membership includes real estate brokers, mort-

gage companies, title companies, home warranty companies, vendor management companies and home builders.

RESPRO's real estate broker members are not alone in providing diversified services for home buyers. According to a 2004 study, 88 percent of the 350 largest real estate companies in the country offer mortgage services; 66 percent of those same 350 companies offer title or closing services. Since our creation in 1992, RESPRO has advocated a Federal and State regulatory environment that would allow any provider to offer the services that it believes would best meet the needs of its consumers, regardless of what industry or affiliation it has.

RESPRO strongly believes that one-stop shopping offers potential consumer benefits such as convenience and lower costs. There have been several consumer surveys and economic studies over the last 15 years that support this contention. The particulars of those are in my written statement.

In 2002, RESPRO decided after careful deliberation to support the concept of financial holding companies and national bank subsidiaries entering the real estate brokerage business. The reason that RESPRO decided to enter into this debate is simply because we believe it is more important to promote one-stop shopping for home buyers than to keep banks out of our business. Also, we were often being viewed as hypocritical by being in the financial services business without letting financial services firms compete with us in the real estate brokerage business.

This latter view was a misperception of RESPRO's position. Frankly, the majority of RESPRO's real estate broker members do not believe that the entry of financial holding companies or national banks into our business would fundamentally change the nature of the marketplace. Over the last 20 years, a number of financial conglomerates have entered the real estate brokerage business, namely Berkshire-Hathaway, General Motors, Prudential, Merrill Lynch, Sears and Metropolitan Life. Their entry concerned many independent real estate brokerage firms at the time, but we eventually found that this concern was unfounded. Some of these financial conglomerates have sold their real estate operations and others have remained in the business, but the basic character of the real estate brokerage business has not changed.

In addition, State-chartered banks in approximately 28 States have been able to engage in real estate brokerage over the years. For example, in southern Virginia, Long and Foster competes with a large bank-owned real estate company with no discernible market effect.

As you know, the debate over banks in real estate has been occupying Congress, the banking industry, and the real estate industry for over 4 years with no final resolution. RESPRO believes it would be useful for the parties in this debate to enter into discussions to resolve our differences and we would willingly participate in any such discussion in good faith.

We expect that the discussion will revolve around, at least in part, ways to protect the safety and soundness of the federally insured deposits of banks affiliated with real estate firms and to ensure that real estate brokers and agents who are affiliated with financial holding companies are subject to the same licensing re-

quirements that apply to all real estate agents and brokers. RESPRO would certainly support provisions in any law or regulation that would accomplish these goals.

In summation, I would want to make four quick points. Number one, consumers want one-stop shopping. Number two, real estate brokers want to and need to stay in the mortgage, title and other affiliated businesses. We think that if financial institutions are not permitted in the brokerage business, that the reverse may start to occur.

Third, if banks enter the real estate business, we are not afraid of the competition. As was said by Congressman Leach earlier, the brokerage business is an entrepreneurial local business. It is very different than the banking business. While I would not want to compete with the national banks by opening a bank, I certainly think that we can deal with them quite handily in the real estate brokerage business.

Fourth, I think that the main point is that all of the parties to this debate should get together and try to resolve their differences of opinion.

Mr. Chairman, thank you for this opportunity to testify.

[The prepared statement of Mr. Eastment can be found on page 95 of the appendix.]

The CHAIRMAN. Thank you, Mr. Eastment.

Thank you to all of our witnesses.

Mr. Mansell, you indicated in your statement that certain banking groups were pressuring the Federal Reserve to issue that rule. Is that correct?

Mr. MANSELL. I believe my testimony was that they had been wanting to get that passed, yes.

The CHAIRMAN. You used the word "pressure." Do you have any evidence that any banking group was pressuring the independent Federal Reserve?

Mr. MANSELL. Well, it was through the banking groups that the request was made and I assume they would like to get it taken care of. That would be the only thing I could say about that. I personally cannot speak to when and how.

The CHAIRMAN. So you do not think that the word "pressure" was particularly appropriate?

Mr. MANSELL. I do not know whether that is the right connotation or not, to be honest with you. I cannot speak to that, Mr. Chairman.

The CHAIRMAN. You were present at the testimony of Gramm, Leach and Bliley, were you not?

Mr. MANSELL. I was.

The CHAIRMAN. Did you notice any disagreement among the authors of that legislation on its intent?

Mr. MANSELL. No, I think they all had basically the same intent.

The CHAIRMAN. And what do you think that intent was?

Mr. MANSELL. I think their intent was to give regulators the authority to regulate what banks could do.

The CHAIRMAN. And when NAR was participating in the debate which became Gramm-Leach-Bliley, your association successfully lobbied for inclusion of a provision in the act that would prohibit real estate development and investment activities. Is that correct?

Mr. MANSELL. I assume that is correct. I was not there, Mr. Chairman.

The CHAIRMAN. In addition to seeking to prevent banks from engaging in real estate development and investment, NAR also urged Congress to explicitly state in the legislation that real estate brokerage and property management activities were not permissible activities for banks. Is that correct?

Mr. MANSELL. I cannot speak to that because I was not there. Evidently, the record is not very clear on that.

The CHAIRMAN. No, the record is very clear on that. The record is very clear on that. As a matter of fact, let me quote you from the NAR's testimony before the Senate Banking Committee during the 106th Congress. NAR "urged that the legislation expressly declare that real estate brokerage and related activities, including property management and counseling, are not financial activities."

Mr. MANSELL. Okay.

The CHAIRMAN. Did the version of financial modernization legislation that passed the Senate during the 106th Congress include a declaration that real estate brokerage and management were not permissible activities for the banks?

Mr. MANSELL. To the best of my knowledge, nothing that has passed either body had anything that said that it would not be permissible.

The CHAIRMAN. Can you cite for the committee any reference in the legislative history of the Gramm-Leach-Bliley Act during the 106th Congress, whether it be a House or Senate committee report, House-Senate conference committee report, House or Senate floor debate or anything else, that supports the National Association of Realtors' current contention that Congress intended to preclude real estate brokerage and real estate management from ever being defined as financial in nature?

Mr. MANSELL. I do not think that was ever put in the record, Mr. Oxley.

The CHAIRMAN. In light of the specific prohibition in Gramm-Leach-Bliley on bank subsidiaries engaging in real estate development and investment, can you explain to the committee why the authors of that legislation chose not to include a similar prohibition on real estate brokerage and management?

Mr. MANSELL. I think what you are looking at here is trying to get a bill through, and the consensus was that is what you could get through. I think that is the reason, because they had to reach a consensus. I think that is true of any legislation that runs through this body, is you have to find a way to get consensus and that is how they chose to get consensus. On the other hand, we have a bill sitting out there that has 238 members that have said their consensus is that it should not be included.

The CHAIRMAN. A lot of those same members, of course, voted for Gramm-Leach-Bliley. It was pretty clear from the testimony of the authors of the legislation, and my memory, having been a member of the conference committee, that was established. So you are basically saying that in spite of the Gramm-Leach-Bliley Act and the consensus among the sponsors and the desire of the regulators who are the experts in this area, that NAR wishes to essentially reopen

Gramm-Leach-Bliley and reverse what was passed in the act 6 years ago?

Mr. MANSELL. I am saying that since it does not specifically address that, we would like to specifically address it.

The CHAIRMAN. It sounds to me as if NAR spoke on that issue and precisely proposed that, but it was at some point rejected because it was not in the Act.

Mr. MANSELL. I think that is absolutely accurate, Mr. Chairman. It was rejected because you had to get consensus on a bill to get the bill through.

The CHAIRMAN. Did the NAR support passage of Gramm-Leach-Bliley?

Mr. MANSELL. At the end, they did support passage of Gramm-Leach-Bliley because we thought that passage of the bill was important. We also believed that we would not be sitting in this position and have a request within the first 6 months after the passage of Gramm-Leach-Bliley since it requires a change in the market or a change in technology, which neither one took place in those 6 months.

The CHAIRMAN. You heard Mr. Eastment's testimony about providing one-stop shopping for people who are intending to buy homes. Do you support that concept?

Mr. MANSELL. Absolutely.

The CHAIRMAN. So how do you differ then from Mr. Eastment, who in fact supports the passage of Gramm-Leach-Bliley and supports banks into real estate?

Mr. MANSELL. I think the only difference is how those services are provided. We support what Mr. Eastment has done in his company, and that is to partnering with banks so that both industries have value in that mortgage piece.

The CHAIRMAN. He is not alone, of course, in that. There are several members of RESPRO that provide that kind of service. Is that correct?

Mr. MANSELL. In our written testimony, there are two or three pages of them that we have provided for you that do that.

The CHAIRMAN. So you support that concept?

Mr. MANSELL. Absolutely. And we have supported it. We believe it is a good concept to merge the two together.

The CHAIRMAN. And yet you do not support the concept that the Fed and Treasury, under the law, have to determine what is financial in nature?

Mr. MANSELL. I do not know that I don't support the concept. I do not support the finding that they have come up with.

The CHAIRMAN. Ms. Duke, do you have any comments on that?

Ms. DUKE. We do not think that real estate brokerage services would constitute commercial activities. We think they are financial in nature. Before joining Wachovia, for most of my career I was a community banker. I can tell you that for nearly all of my customers, the primary component of their net worth was the equity in their homes. It is one of the ways that the American consumer builds wealth. It is also the largest financial transaction that many of our customers would engage in their lifetimes. So for that reason, we think it is financial.

Secondly, we would draw the line in that we would not own the real estate. This is not development or ownership and selling something that we own. This is merely bringing together buyers and sellers in an agency relationship.

The CHAIRMAN. Precisely, which was excluded under the provisions of the Gramm-Leach-Bliley Act.

Ms. DUKE. Correct.

The CHAIRMAN. Mr. Mansell, isn't it true that all consumer protections, including all State licensing qualifications, sales practices, continuing education requirements that apply to realtors, plus strict privacy laws and anti-tying rules, would apply to bank-affiliated real estate agents?

Mr. MANSELL. I think that would be true in the beginning, yes, Mr. Chairman. I do not believe it would be true long term because I believe the OCC would preempt State law, just like they did with predatory lending laws.

The CHAIRMAN. What makes you think that would be the case?

Mr. MANSELL. Because there is nothing that makes me think it would not be the case, is more accurate.

The CHAIRMAN. Have you seen any evidence in the 28 States that permit banks into real estate, do you know of any abuses, consumer protection issues, or any other violations that you know of?

Mr. MANSELL. In that regard?

The CHAIRMAN. Yes.

Mr. MANSELL. I do not know of any.

The CHAIRMAN. Mr. Eastment, you mentioned the fact that you provide full service, and indeed that was the essence of Gramm-Leach-Bliley, wasn't it?

Mr. EASTMENT. Yes, sir, it was.

The CHAIRMAN. And you have been the embodiment of that, along with other RESPRO representatives, and indeed I congratulate you on that because I think that is precisely what we tried to do. It seems that Mr. Mansell basically is in favor of a one-way street, but not a two-way street. Would you speak to that?

Mr. EASTMENT. I think it may even go past RESPRO members. As I said in my testimony, 88 percent of the largest 350 brokers in the United States are in the mortgage business. I think the only area where Mr. Mansell and I disagree is that if banks were to get into the brokerage business, we do not see that as the end of the world.

I can remember in 1978 when Merrill Lynch came to us and told us they were going to put us out of business. Well, they exited that business in about 5 years and we are still in it. I do not think that the largeness or the financial capacity of financial holding companies threaten our business. Our business is basically a low capital-intensive business and we feel we can compete.

The CHAIRMAN. Let me ask each of you, since I participated in that as a subcommittee Chair and a member of the conference committee, and as Mr. Mansell said, there were obviously compromises made along the way. We worked for probably 60 years to repeal Glass-Steagall and get an undergirding for the new financial services marketplace.

I think it is also safe to say that not everybody got everything they wanted in that legislation. I would assume that includes the

banks. Is it appropriate in that context, when you have historic legislation like that, to come back after the Deal is struck and try to reopen and change and to basically get what you did not get the first time around? Let me ask you that, Mr. Mansell. Do you think that makes any sense from a public policy standpoint?

Mr. MANSELL. I think it must be appropriate when we have 238 members of the House that agree with us.

The CHAIRMAN. Do they agree with you that we ought to reopen Gramm-Leach-Bliley and change the basic context of that legislation?

Mr. MANSELL. I think they agree that we should restrict banking conglomerates from getting into the real estate business.

The CHAIRMAN. In spite of the fact of what Mr. Eastment has talked about and providing full service real estate, or what Ms. Duke has testified to, in spite of all of that, and in spite of the legislative history. Let me ask you this. Do you think that your representatives missed the boat during the conference committee?

Mr. MANSELL. I honestly cannot speak to that. That may be a fair conclusion from where you are sitting, but I cannot speak to that because I was not here. I do not know if they were included in the last day of discussions.

The CHAIRMAN. Of course they were.

Mr. MANSELL. Some of those final things were done in those wee hours.

The CHAIRMAN. It was right in this very room as a matter of fact. And you say that the NAR was not represented?

Mr. MANSELL. I did not say that. I said I do not know if they were.

The CHAIRMAN. Okay. Believe me, they were. The agreements were made, and it was not long after that agreement and passage of that historic act that NAR sought to overturn the intent of that act. I think that is why we are here today, and the only reason we are here today.

Mr. MANSELL. Correct.

The CHAIRMAN. The gentleman from Pennsylvania?

Mr. KANJORSKI. Mr. Chairman, I, too, was here in 1999. I did not get the impression we were writing the Bible. Is that what that act encased, a biblical act of some sort that something left uninterpreted would later be interpreted and always against the interest of the argument? The argument today, as I understand it, was a matter of banking and commerce, and I was one of those and still am adamantly opposed to mixing of banking and commerce.

The fact of the matter is that as the history was repeated by our first panel of witnesses, there was no mention for the purposes of making sausage of brokerage and management. It was left unsaid. If the history, as I understand it, is the application was by the banking industry to their regulator to allow them to engage in that and to define special new categories and changes that would allow them to define brokerage and management as financial activity. Now, maybe I am remiss in my recollection, but that is the best recollection I have.

What we are really here today is considering an issue that was ignored by this committee and the Congress because it was too contentious to come to compromise to pass a new regulatory act, H.R.

11. Now, we are reexamining whether that should be done. As I understand the hearing, it is based on the Oxley-Frank bill which in fact is now making a definition that clearly brokerage and management is under the act, the original act.

The bill pending, H.R. 111, my bill and Mr. Calvert's bill, is to the effect that we want to now delineate very clearly that it was not the intent of Congress and we have 238 members of the sitting House of Representatives that agree with us, and I believe there are two sponsors to the Oxley-Frank bill at the present time. But that is not the point. The question is: Should we mix banking and commerce? What will be the impact on the industry?

Let me ask Ms. Duke, the top 10 banks in the United States, what is the share of the banking industry that they are concentrated? How much of the banking industry do they have? Do you have any idea?

Ms. DUKE. I do not have it on the top 10. I know on the top 3, it is about 17 percent.

Mr. KANJORSKI. On the top 3, 17 percent.

Ms. DUKE. The top 3, about 17 percent. As we understand it, within the real estate industry, the top 3 would account for 56 percent of the business.

Mr. KANJORSKI. Oh, I have figures before me that the top 10 have only 10.5 percent. I do not know where you get your figures. But as a result of that, if I may, Mr. Chairman, I would like unanimous consent to offer in the record something that was denied, I think, entering into the record now as an exhibit showing the top 75 firms and the statistical analysis on the concentration of market share of these firms.

The CHAIRMAN. Without objection.

Mr. KANJORSKI. Mr. Mansell, you represent 1.2 million regulators, realtors.

Mr. MANSELL. Yes.

Mr. KANJORSKI. Regulators, sometimes it is like 1.2 million regulators.

Mr. MANSELL. There are that many sometimes, I think.

Mr. KANJORSKI. How many banks are there in the country, Ms. Duke?

Ms. DUKE. About 7,000.

Mr. KANJORSKI. 7,000. There used to be about 15,000 just a short while ago, about 7 or 8 years ago. A lot of people just decided there was not any profit in the banking business, or did they consolidate?

Ms. DUKE. There has been quite a consolidation, but there are actually about 1,200 new charters chartered every year, so there are additional banks.

Mr. KANJORSKI. I wonder why there are so many community banks that are started up every year in all these communities? Why would people want to start with a new bank if the present existing banking system is providing such luxurious service to so many communities in America. Well, that is a rhetorical question. I am not going to ask you to answer that.

I am going to ask you to answer this, though. One of the reasons I support H.R. 111 has little to do with banking, quite frankly. It has to do with community service and leadership. I am disturbed in my community, my district and my State, at the loss of partici-

pation of leadership from the banking community because of consolidation.

When I first came to Congress 20 years ago, we put competition on for the Saturn project in my district. I called up a very good friend of mine who was a banker. I said, Rica, will you call the leadership of the community together so we could organize? And he did. We went to the local club. I was not a member, but he was, as most bankers were, but members of Congress are not, and we had our meeting. At that meeting, 40 bank presidents were there, 40. I was impressed. And they worked diligently, hard to make this fight for about 6 months. We lost the fight.

Today, if I wanted to call that regional fight together and I called Rica up, he is retired now, but if I said Rica, get all the presidents of all the banks together at the club so we can discuss this fight, we could not get 6 presidents because there aren't any. Now, I am sympathetic to industries being competitive, but competition is also that you have a presence in communities, that you participate in community leadership. The consolidation of the banking industry does not afford that opportunity today.

So one of the strong efforts for the realtors, they are about the last group of leaders in my community that when I call and want to do something for the Boy Scouts, for the United Fund or for economic competition or development, the realtors are the largest group that show up now because they are still private individual business people.

Now, if we pass the chairman's bill, I think you may even be able to make a strong argument that the price may go down in some services. I do not really care, because the price to my communities, to Pennsylvania, and I think to rural America is that, you know, we give at the office. When you ever go to a contribution, the office is usually New York or Houston or Miami or somewhere. It is not in rural, it is not in small, it is not in middle-size America.

So this is as much a sociological problem of determining whether or not we are going to have further concentration in this country, not only of wealth, not only of power, but of leadership.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Iowa, Mr. Leach?

Mr. LEACH. I will pass. Thank you.

The CHAIRMAN. The gentleman passes.

The gentleman from Alabama?

Mr. BACHUS. I thank the chairman.

Mr. Eastment, do you think there is a lot of competition in real estate brokerage today?

Mr. EASTMENT. It is very competitive. I thought there were 80,000 firms. I heard earlier there were 300,000 firms. Nevertheless, it is a very competitive business. While there has been some consolidation, for every consolidation the cost of entry is quite low, and we have people going out and starting up business. So I think it is very competitive.

Mr. BACHUS. And you do not see that ending?

Mr. EASTMENT. No, I do not.

Mr. BACHUS. Okay. One of the reasons advanced for allowing, for Congress in debating whether or not to affirm what the Federal

Reserve and the Treasury has done is that it will increase competition, but it is a very competitive market today. Is that so?

Mr. EASTMENT. Yes, it is.

Mr. BACHUS. In the banking industry, have you seen a lot of consolidation?

Mr. EASTMENT. Yes, I have.

Mr. BACHUS. Okay. I know there has been a lot of talk about that in certain State banks, the State-regulated banks are into real estate, but we do not have any large-scale banks that you know of doing real estate brokerage and management nationwide, do we?

Mr. EASTMENT. Not nationwide, just locally in southern Virginia where we compete.

Mr. BACHUS. But if this regulation went into effect, then we would have our large national banks at least would have the opportunity, the so-called megabanks, to get into real estate brokerage and management, would they not?

Mr. EASTMENT. Yes, they would have that opportunity.

Mr. BACHUS. Are there different talents needed to broker and to manage property than, say, to lend money? Those are two different basic businesses, are they not?

Mr. EASTMENT. I think they are very different businesses. Banking is highly structured. As was said, the local banks have branches. Our people are out in the street and it is very entrepreneurial. It takes very different skills.

Mr. BACHUS. I noticed back in the 1970's when the banks started sponsoring these real estate investment trusts, do you recall what happened to those?

Mr. EASTMENT. I am not familiar.

Mr. BACHUS. Okay. Most of them collapsed with large losses. There has been some concern expressed by the president of the Federal Reserve in Minneapolis that as banks become more diversified and getting into fields that they have not normally done that is riskier behavior because it is not the business that they are as adapted to do and they have experience. Do you agree with, I think it was, Governor Stern?

Mr. EASTMENT. I just feel that there just should not be legislation. I think the marketplace should take care of that. If the banks would get into the business and succeed and build a better mousetrap, that is fine for them. If they fail, real estate firms fail every day, too. It is the marketplace.

Mr. BACHUS. Is there not a difference in a federally insured institution?

Mr. EASTMENT. Yes. But as I understand the proposal, there would be firewalls and we would support that. In addition, a real estate brokerage business that was owned by a bank should conform to all the applicable State and Federal regulations.

Mr. BACHUS. But a failure of a wholly-owned subsidiary could domino into an effect on the federally insured institution, could it not?

Mr. EASTMENT. I do not necessarily agree that would happen, though.

Mr. BACHUS. But you just said, I thought you said, let them get in the business; if they fail, they fail.

Mr. EASTMENT. We are talking, as I understand it, about large banks competing in the real estate marketplace.

Mr. BACHUS. I guess we have to assume that if they get in the business, they could fail.

Mr. EASTMENT. I think if anyone gets into a business, they can fail.

Mr. BACHUS. I am not saying they will, but if they did then it would have a financial effect on the bank and the banks are federally insured by the taxpayers, by depositors, and it would have an effect on our deposit insurance fund, could it not?

Mr. EASTMENT. I support appropriate firewalls to protect that from happening.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from California, Ms. Waters?

Ms. WATERS. Thank you very much, Mr. Chairman.

Let me just state for the record so that there is no misunderstanding about where I stand on support of the real estate industry. I have been very clear. I have been outspoken. I share my colleague Mr. Kanjorski's feelings. I support H.R. 111. I will be an advocate in every way that I possibly can for the real estate brokers and their ability to do what they do so very well, without being literally overtaken by the banks that are consolidating more and more, and I guess swooping up more and more industries into their net.

I want to ask Mr. Eastment about the joint venture. Could you tell me, what does it mean to have a joint venture with a bank? Does it mean that you have a responsibility to make sure that you give that bank that you have the joint venture with the opportunity to finance the mortgage? What does that joint venture mean?

Mr. EASTMENT. Our mortgage company, Prosperity Mortgage Company, is 50 percent owned by Long and Foster and 50 percent owned by Wells Fargo Mortgage. It is jointly run by the two of us.

Ms. WATERS. So what is your responsibility to Wells Fargo?

Mr. EASTMENT. Our mutual responsibility is to serve the customers at Long and Foster with one-stop shopping. We make loans available to them if they wish to take it, and then we try to do the best possible job to get them the proper loan and get to the closing table.

Ms. WATERS. And does your mortgage company have the same products as Wells Fargo? Do you have like products or are your products different?

Mr. EASTMENT. We have identical products.

Ms. WATERS. Do you have more subprime loans than in the Wells Fargo portfolio?

Mr. EASTMENT. We do not have any more or any less. We have the same product line from A to Z that they do.

Ms. WATERS. So all of your customers are kind of geared to either your mortgage company or to Wells Fargo?

Mr. EASTMENT. Could you repeat that please?

Ms. WATERS. All of your customers are directed to your mortgage company or to Wells Fargo?

Mr. EASTMENT. Our mortgage company is full-service. We have 450 people who originate the loans; who process the loans; and who close them. And once they are closed, they are sold to Wells Fargo.

Ms. WATERS. I have been handed something that talks about your need to disclose. When you are dealing with customers, they have the right to know that they do not have to use your mortgage company or they do not have to use Wells Fargo. Is that correct?

Mr. EASTMENT. That is correct. They are handed a disclosure at settlement that is required under RESPA that discloses any ownership that we have in the mortgage, the title or the insurance company.

Ms. WATERS. Well, for any of you on the panel, let me just say what I like so much about the industry the way it works now. It was alluded to by my colleague that the real estate industry is truly entrepreneurial. What I like about it is the fact that you have these brokers and you have these real estate agents, and they operate in ways that, you know, many women, for example, are in this business. They operate sometimes part-time. They can design their lives how ever they want to design them, to work a few hours, to work more hours. I like this industry because you have so many entrepreneurial opportunities. I do not want to see it consolidated under the auspices of big banks.

For example, the purchase of a house or a home really does create opportunities in so many ways, the escrow agent, the appraisers, the inspectors, the insurance companies. I like all of them at work, all of them at work doing what they do best, competing, offering their services and just really creating opportunities. What is it about either the joint venture or the opposition of the banks or the desire of the banks to include real estate services? What is it that you can consider creates more competition and more opportunity than the way it operates now?

The CHAIRMAN. The gentlelady's time has expired. The witness may respond.

Ms. WATERS. I will direct that to Ms. Duke.

Ms. DUKE. A couple of things. First of all, the characterization of all banks as the large banks that have been consolidated, there are probably 50 banks that would be considered large banks, and there are 7,000 community banks. Those community banks are working just as hard to compete with those large banks every day and are showing up in their communities, along with other bankers from banks of all sizes.

Ms. WATERS. Until you all buy them up.

Ms. DUKE. Excuse me?

Ms. WATERS. Until you purchase them. Go ahead.

Ms. DUKE. Well, I have myself started two banks and have myself been purchased and started again.

To the question of the realtors and their entrepreneurialism, I would expect that banks entering the real estate business would do so by hiring the best realtors in the marketplace. It would be not to our advantage to go into the marketplace without the right professionals there. If those same entrepreneurial realtors decided that the proposition offered by bank-owned agencies as employers was better than another agency as an employer, I think that is a win for that entrepreneurial agent.

The CHAIRMAN. The gentlelady's time has expired.

The gentleman from Oklahoma?

Mr. LUCAS. Thank you, Mr. Chairman.

If I could use Ms. Duke and Mr. Mansell more as a conduit to pass some concepts along to your association people, from my perspective it is time for both parties to sit down and work this out. Bring your bright policy people together somewhere and come up with a compromise that no one will necessarily like, but can live with and get on with it.

I was a junior member of this committee when this bill was written. Yes, this and a few other things have been interesting quirks since then that have come to light. Obviously, when this was put together, the bankers' policy people were either very skillful or very bright. To my realtor friends, obviously on this particular moment on that day, your policy people were not awake at the switch, but the circumstances are where they now are. We have 28 States, according to testimony here, that allow State-chartered banks to do this. The barn door is open. We cannot return to where we were. Set your policy people down and come up with something that all of you can live with.

I have had all the bankers and all the realtors to my town meetings that I would ever care to have. You are all wonderful people. But the sandbox that you are playing in, you are doing no good by throwing sand in each other's eyes constantly. Sit down and sort this out for your own benefit and for the benefit of all of our customers and constituents. Sort this out.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the learned gentleman from Oklahoma.

The gentlelady from New York?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. Duke, as you know, minorities continue to lag behind nonminorities in achieving homeownership. Do you believe permitting banks to engage in real estate activities will help close this gap?

Ms. DUKE. Yes, ma'am, I do. Banks have a number of outreach programs that go into all manner of communities, and particularly low-to moderate-income communities and minority communities in order to make mortgage loans and to make lending available. I think combining that with real estate services would be a positive for those communities.

Ms. VELAZQUEZ. Mr. Eastment, when you answered Mr. Bachus, you talked about the competitive nature of your business, or the real estate industry. Typically, 6 percent of the home purchase price goes to real estate agents. Do you believe permitting banks to engage in real estate activities will impact this fee?

Mr. EASTMENT. I think that fee is being impacted as we speak, even without banks. The marketplace is very competitive and is forcing commission rates now. I believe banks, if they had a significant market share, would add to that pressure.

Ms. VELAZQUEZ. Mr. Mansell, over the last decade the financial service industry has tended toward greater consolidation. At this point at the end of 1984, there were more than 15,000 banks. At the end of 2003, there were less than 8,000. With regard to the real estate industry, it is populated by independently owned small businesses. If banks were permitted to engage in real estate activities,

how would this impact the competitive landscape of both industries?

Mr. MANSELL. Thank you for the question. We believe that the competitive nature of the real estate industry would be less, not more, because of consolidation. Right now, the largest company in the Nation has 4.8 percent of the market. Everybody else is in the 1 percent range. Our friends at Long and Foster have 1.1 percent of the national market, and they are the third largest company in the Nation. After you get to the fourth one, nobody has even .05 percent. As you look at that, what could be more competitive?

The other thing that is interesting in the real estate side, 5 years ago we had 700,000 members of the real estate industry. Today, we have 1.2 million. Can you show me any other industry that has grown so much to stay competitive with so many people out there trying to participate in the business and this competitive and wonderful market that we have been involved in? Frankly, that is what has driven it, but it has stayed extremely competitive. I think by this consolidation that would take place, and I do believe it would take place, that you would have less opportunities and less competitiveness.

Ms. VELAZQUEZ. And Ms. Duke?

Ms. DUKE. We think we would make it more competitive. In addition to adding just a number of competitors, I think the banking industry does bring some advantages of technology as well as capital. You may not see large numbers of banks racing to get into the real estate business. I do not think you will see banks going into that business unless they believe that within their business model and their customer base that they have a better proposition, that they can provide better services or services not currently provided at a competitive price.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The CHAIRMAN. The gentlelady from Illinois, Ms. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman.

In 1999, I sat down in the front desk. I was not at the kiddie table at that time, for those of you who remember the kiddie table. There were three of our members there. So I was very proud that I had a desk.

I came to this committee thinking that I had served on financial services in the State legislature and this was going to be an issue about banking versus insurance. Was I ever naive. This was a real education in financial institutions. So many of the members that were here then had spent most of their congressional service talking about this issue and working on the Gramm-Leach-Bliley as the title came to be.

My point is that there are so few of us remaining who are here and were really involved in this dialogue in 1999. I was asked when this real estate bill came out to sign onto it every year. I said that I really could not sign onto a bill if it was going to be heard, would come up in this committee, and to make a decision prior to the discussion of the bill I thought was wrong. I had to keep an open mind. I have an open mind right now.

In my former life, I was a real estate attorney and worked on that. Illinois is a little bit different because we have a case which says that real estate transactions must have a lawyer. It is very

lucrative for those that were in the real estate practice to be involved in that. But I have an open mind.

What my concern is that when I said I could not sign on as a cosponsor, I had ads run against me in my district. And that, I think, was wrong. I wonder how many people that happened to in this body that had ads run against them, because I think for us to make this decision to decide whether the regulators should go forth with that decision or whether it should be something in Congress, I do not know. I have not heard anything yet in this discussion that makes me have a firm view one way or the other.

I do think and I do agree with Mr. Lucas that the bodies need to get together. I would hope that they would sit down and discuss this issue so that then whether we need to do this or whether the regulators, because Gramm-Leach-Bliley was I think a bill that came out that I was very proud to have been here at this time. I think to reopen all of what went on before is wrong, but I also think that the bill was made so that there can be, as the market changed, the place changes, that there can be accommodation. But I think if the parties would get together first and make those decisions, rather than having this fight between the two bodies is bad.

With that, I really do not have a question, but I will ask Mr. Eastment, because you seem to be kind of in the middle of this process, what would it take to get the real estate industry to the negotiating table? Am I correct that there are some useful models that have been developed by State legislatures across the country for addressing potential conflicts of interest and other issues that arise when banks engage in real estate brokerage?

Mr. EASTMENT. I totally support the comments about how we ought to all get in a room and hammer this out. I think the only area where the National Association of Realtors and RESPRO really disagree is the fact that we do not think the world would end if banks get in the business. RESPRO represents real estate companies that provide over 50 percent of the real estate transactions in this country. The majority of RESPRO's members do not feel that the world will come to an end.

So I would like everyone to get into the room together. As far as a model for that, the Commonwealth of Virginia several years ago passed a bill to allow State banks into the business. It was a compromise that was reached between the bankers and the realtors in the State. As a result of that bill, there is at least one bank who has bought a real estate company. I think that could be referenced as a model.

The CHAIRMAN. The gentlelady's time has expired.

Mrs. BIGGERT. Thank you.

The CHAIRMAN. The gentleman from Illinois, Mr. Gutierrez?

Mr. GUTIERREZ. Thank you, Mr. Chairman.

Ms. Duke, if national banks are permitted to engage in real estate activities, what laws would govern their activities? Would they be licensed and regulated by the States, since there are no Federal laws in this area? Would the State Attorneys General have jurisdiction over them?

Ms. DUKE. The real estate activities would be licensed and governed by the State laws. However, the banks would also be governed by Federal laws which address things like privacy and anti-

tying. So there would be a combination of the two, but the real estate activities themselves would be governed by State laws.

Mr. GUTIERREZ. If they are to be governed by State laws, why are you not subject to State laws governing your other subsidiary activities? I would think that mortgages are local as well and are tied to property.

Ms. DUKE. Actually, the insurance business is still governed by State law, rather than a national law.

Mr. GUTIERREZ. In other words, if I hear you correctly, if banks were to engage in real estate activities, locally you would be regulated by States and come under the jurisdiction of the local attorneys general. So if you sold me a home and then I imagine your banks are going to give the mortgage, why wouldn't that mortgage that you give tied to that loan be regulated by the same State agencies?

Ms. DUKE. The brokerage business, which is regulated by the States, in the case of real estate and insurance, are governed by the State. The Federal laws, particularly on disclosure on mortgage lending, do govern. They are enforced in some cases with national banks enforced by Federal regulators and with State banks enforced by State regulators as well as Federal regulators.

Mr. GUTIERREZ. Yes, and as I heard my colleague suggest earlier, but there is no anti-predatory law there.

Ms. DUKE. I am sorry?

Mr. GUTIERREZ. There would be no anti-predatory laws there.

Ms. DUKE. No anti-predatory laws in the real estate business?

Mr. GUTIERREZ. If you are not regulated, if your one activity has nothing to do with the Federal Government, right, that is the side of your activity that has to do with mortgages, right, there is nothing at the Federal level to prohibit that.

Ms. DUKE. I believe the Comptroller of the Currency is the one that regulates lending activities of national banks.

Mr. GUTIERREZ. Right. That is my point. So there would be no anti-predatory lending laws governing that activity. So you would have two activities. It just seems to me that as we have a marketplace, you would be put at a particular advantage. That is to say that State banks regulated by State and local banks versus national banks would have two different areas in which they would compete.

One would be regulated by the State both for the real estate license division, which you say you would be covered by the State, but on the other hand they would also be on the mortgage end, that is on the lending end, but you would not be on the lending end. You said earlier you would only be covered by Federal regulators.

Ms. DUKE. On the issue of predatory lending, there are numerous laws that govern the lending. On the issue of the competitiveness of the mortgage market, the vast majority of mortgages, whether they are originated by banks or they are originated by independent mortgage companies, are sold into the secondary market and are governed by those market forces.

Mr. GUTIERREZ. Yes, but somebody sells them. There has been a lot of conversation today about fair competition. Aren't there similar concerns about competition is not fair if national banks are not

subject to the same State laws and regulations as State banks currently are? Doesn't that question need to be answered first before we move forward into the area of allowing our national banks to sell real estate?

Ms. DUKE. I am not sure even in the case of independent mortgage companies, that they are regulated by other State or Federal regulations.

Mr. GUTIERREZ. I am talking about banks, since you represent the banks, and not so much the independent mortgage companies, since we want a level playing field for everyone. So in other words, if I have a State bank, that is regulated, according to your testimony, by both the State and the Federal governments. But the national banks would not be regulated by the Federal Government in terms of giving out mortgages because, as you said, that is only Federal regulations on them.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from California, Mr. Miller?

Mr. MILLER OF CALIFORNIA. Thank you, Mr. Chairman.

Many people in this House disagree on many issues we vote on each and every day. Chairman Oxley is, I think, a great man. I have tremendous respect for Chairman Oxley, but when you look at members of this committee who go to the floor and vote, one press is red and one press is green. It does not mean that one is necessarily right and one is necessarily wrong, but we have a difference of opinion.

When Gramm, Leach and Bliley worked on this bill, they were all good men. They really had the best of intentions. They tried to come up with the best product that they possibly could come up with. There are certain areas within the law, Gramm-Leach-Bliley, that are not prohibited. There are areas that are silent. Powers were given to the Federal Reserve and the Treasury and those are subject to review by the regulators, which are the regulators. But when we talked about GSE reform, many of us had huge concern with the Treasury Department taking oversight over GSEs because of their lack of expertise, we believed, in housing.

Now, one of my favorite individuals as a comedian was W.C. Fields. He one time said, "I spend far too much time searching through the Bible trying to find loopholes."

You know, I guess maybe if it is not prohibited and subject to review, that might be considered a loophole by some people. As a Christian, I know I read the Old Testament and the New Testament. One says one thing, ah, God changes his mind and he has a New Testament. Something else happened. We are all the time around here passing laws because we are changing laws we previously passed that we think need to be changed.

Now, something keeps being said that there is a need for competition. I have been a developer for over 30 years. I have tremendous respect for lenders because if it was not for lenders, I could not have built houses. We had one-stop shops. We built houses. We had a realtor sell the house. We provided a lender to make the loan. Usually, the guy who made me the construction loan, I tried to give them the take-out if I could. We used escrow companies and we provided title policies, but I did not own any of those. I was just the builder out there.

Now, if competition is good and if real estate is considered financial activities, I guess you would say where does that end? Because things have changed in the development industry today. We have a lot of publicly held corporations out there building homes, KB, Lennar, and many other ones. In some way, they have an advantage over the old private ma and pa construction company because they go to the stock market and raise huge amounts of money.

Now, if competition is just what we are concerned about, I really think banks could probably be more competitive building houses than I could as an independent guy because you have more money than we do. You can take those risks we can't. I mean that in a good way, not a bad way. Do I think you should? No, I do not think you should.

But if I am looking for competition, I will bet you Bank of Wal-Mart could probably make me a good loan out there and save me 10 or 15 percent. I used Bank of America. I have used them since it was Security Pacific, for 30-some years. But I will bet you Bank of Wal-Mart would probably make me a good deal when I went in there to buy my pretzels and whatever I buy at Wal-Mart. I will bet you Bank of Wal-Mart auto mall could probably save me a lot of money, too, because they would probably work on a smaller margin than many good friends of mine who have auto malls and sell at dealerships.

So if we are purely looking at competition, that opens up an area that is so broad in and of itself that I think we need to be very, very, very cautious. Even the founders who wrote the Constitution amended it because there were certain things that they thought needed to be changed as time went along. I see a problem with this industry being opened up to banks. It is not that I have anything against banks. I have huge respect for banks. I deal with a lot of bankers, but I deal with a lot of realtors, too.

I think there is a huge conflict of interest if banks could be a one-stop shop for real estate and title work. To give you an example, a title company guarantees the title to a piece of property. If a bank could do that and there was a problem on the title guarantee, who does the person who owns a home go to? Not only did they borrow the money from the bank, the bank guaranteed the title to make the loan to buy the house. Is there a conflict of interest there? I think there is. That is my perspective. I have never owned a title company. I have never owned a bank. I am not a realtor today, but I see inherent conflicts in those areas.

I think banks see a huge conflict with Wal-Mart getting involved in the banking industry because they could do everything. Next thing you know they will be building the houses. They will be providing the realtors out there. They will be providing the title insurance. They will be providing the loan. Wal-Mart really works on a competitive, very small margin out there.

And then are we going to consolidate our entire housing industry and financial industries in a very few people? I think we could do that.

The CHAIRMAN. The gentleman's time has expired.

Mr. MILLER OF CALIFORNIA. So I commend the chairman for having the hearing so we can at least talk about the issues, and sometimes we just disagree.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from North Carolina?

Mr. WATT. Thank you, Mr. Chairman.

I will call Mr. Miller and raise him. He quoted W.C. Fields. I have an even more famous philosopher that I think this situation calls for, and that is Yogi Berra.

He said when you reach the fork in the road, take it.

The banks feel like we reached the fork in the road when we passed Gramm-Leach-Bliley, and we took it. The realtors think we ought to go back to that fork in the road and take it again. So I kind of feel like Barney Frank on this. I actually love these disputes because they remind me of the telecommunications debate. All of the parties are so well-financed and have the best lobbyists in America and they are in here fighting with each other and throwing stones at each other, and exposing some of their own vulnerabilities in the process.

One vulnerability was referred to by Mr. Gutierrez for the banking industry. It is hard for the banks to say we are going to be regulated by State and local real estate laws, when the Federal regulators have preempted the Federal banks from predatory lending laws at the State level. That is a real problem.

It is hard for the realtors to be in here talking about this as competition. I am not sure it is about competition on either party's side. It is about who gets the advantage of competition. But it is hard for realtors to say that with a straight face when they have some issues with online real estate people.

I did learn a lot today. I was in the room when we did Gramm-Leach-Bliley and I thought I knew what was going on until I heard Mr. Leach testify.

Then I realized that a whole different discussion was going on. I was over there fighting Senator Gramm on whether he was going to crack down on community groups when they opposed bank mergers. We were trying to get some language there, and a whole different discussion was going on at a much, much higher and different level, but it is wonderful.

I love this debate because it is totally bipartisan: Oxley and Frank on one side; Kanjorski and Bachus on the other side. I mean, that is about as bipartisan as you get.

Now, you notice I do not have a question.

I am just getting all this out of my system.

Mr. LEACH. Will the gentleman yield?

Mr. WATT. No, no, no, no. Oh, to Mr. Leach? Yes, definitely, I will yield.

Mr. LEACH. I just wanted to explain to you. I thought the logic of the Phil Gramm statement was something today that I recognized completely. The tone was not.

Mr. WATT. I think I could certainly concur with that. The logic of everything that everybody testified today was brilliant, but my recollection is we just kind of punted this issue to the regulators because we were afraid to deal with it. It was going to blow up the whole Gramm-Leach-Bliley discussion. This was a good way to put it off to a future time. Maybe that time has come, which is why the Yogi Berra comment seems to me to be applicable.

There is no question in my mind that real estate brokerage is incidental to financial services. I mean, just about anything you could think of would be incidental to financial services. I think the question is, should it be financial or shouldn't it be, and so then we get to the question of who should be making that decision. Should it be legislators or should it be regulators?

We are back to the box we were in when we were dealing with Gramm-Leach-Bliley. We are going to have to bite this bullet and not blame whatever the regulators decide at some point. Should it be this committee or should it be the Appropriations Committee? I do not have any question where I come down on that.

I hope one lesson will be learned by all parties from this discussion today, however, and that is one that all of the parties learned in the telecommunications debate. You can spend a lot of money fighting about this, but at some point you all are going to have to get together and sit down and talk about it and try to reach some meeting of the minds, and then perhaps you can get all of us off the hook, because right now we are having to make some tough decisions. Do we love real estate people and hate banks? Or do we love banks and hate real estate people? None of us really fall into either one of those categories, in my opinion.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Texas, Mr. Hensarling?

Mr. HENSARLING. Thank you, Mr. Chairman.

I do not with to take up the committee's time with this, but perhaps after our hearing the gentleman from Iowa can inform me inasmuch as I failed to capture Chairman Gramm's tone, whether that is praise or criticism. I am not sure.

Mr. WATT. You need to be a lot more surly, young man.

Mr. HENSARLING. Thanks for your guidance.

Mr. Chairman, before I get into my line of questioning, I would like to make one observation. I notice that a number of my colleagues, members of this committee, have shown a lot of consternation over bank consolidation. For those of us, myself and my friend Mr. Moore from Kansas and others who are working on regulatory relief legislation for our financial institutions, have heard very compelling testimony that the regulatory burden on our financial institutions is one of the top drivers of bank consolidations. I hope that as we work on that legislation, Mr. Chairman, that my colleagues will recall their enthusiasm for wanting to deal with the problem or the challenge of banking consolidation and embrace our legislation.

Mr. Mansell, I would like to ask you a couple of questions and make sure I really understand exactly where your association, how they feel on this issue. Number one, is there an objection to the Gramm-Leach-Bliley process in determining the definition of financial activities? Or do you just feel that the Fed and Treasury got it wrong here?

Mr. MANSELL. I think I would have to say we think they got it wrong. You might ask yourself, are those the two right parties that should be making that decision? Or should maybe one of them be eliminated and have Commerce be the other one, so that you have two sides of the argument in the regulator side that can also make the determination. As it is, you have a pretty lopsided regulator.

In fact, you could ask the question, is it a regulator or is it a permitter?

Mr. HENSARLING. So the answer to the question might be both, some concern with the process and certainly you believe they got it wrong here.

In your testimony, I think a couple of times you used the phrase "huge banking conglomerates" in speaking of your fear of what they would bring to the marketplace. One of my colleagues brought up the specter of Wal-Mart, if you will. Would you be against Wal-Mart being in the business of competing in real estate brokerage? Are they viewed as a conglomerate or banking? Or is the fear merely huge?

Mr. MANSELL. I do not know that I would particularly like to see them in the banking business. They would certainly be huge, but there would be nothing to prevent them from doing that.

Mr. HENSARLING. So your association would not necessarily advocate legislation that would prohibit them getting involved in real estate brokerage merely because they are large?

Mr. MANSELL. No, it would not be, because they are commercial in nature and we believe we are commercial in nature. And so there would be nothing there that would prevent that.

Let me add that Wal-Mart sells assets or a product, so they are commercial in nature. Real estate brokers sell product or assets. What makes the real estate broker any different than the Wal-Mart when you are defining which one is financial in nature? I think you have it just backwards in the consideration, and that is the sale of the home and the finding of the home is generally the first thing that takes place.

The financing comes after. I believe that was the testimony of Ms. Duke. I would agree with that. So which one is incidental? It seems to me that the financing is the incidental part of the real estate transaction and 20 percent of all the homes that are sold have no bank financing on them. They are either cash or seller-financed.

Mr. HENSARLING. If I could, my time is starting to draw to a close here.

The portion of your testimony that I would tend to feel most compelling, I am very sensitive to arguments that someone is leveraging a government-provided benefit to unfairly compete in a different arena. However, in my own survey, it appears that the mortgages that banks are offering are typically within a few basis points of those offered by real estate-affiliated mortgage lenders. If they have all of these advantages, why don't I see a greater disparity in the mortgage rates that are offered? How are they leveraging their benefits, be it their FDIC insurance or the other benefits that you elucidate in your testimony?

Mr. MANSELL. I do not know that they are leveraging them. I think they are using them to the highest profit possible. Therefore, they are letting the market determine where that pricing is, rather than using that advantage.

Mr. HENSARLING. I appear to be out of time, Mr. Chairman.

Mr. LEACH. [presiding] Excuse me? Fine.

Mr. Sherman?

Mr. SHERMAN. Thank you, Mr. Chairman.

I note that the majority of Congress is cosponsoring H.R. 111, yet only one of our witnesses is taking that position. So I am going to make a number of observations, and then ask Mr. Mansell to respond to these observations.

First, I would note that current law undoubtedly allows a combination of mortgage banking and real estate. The issue before us here is whether we are going to combine federally insured banking with real estate brokerage. Another observation is that Gramm-Leach-Bliley, we are talking about whether we should open it up. Well, the supporters of H.R. 111 think Gramm-Leach-Bliley needs to be clarified. The supporters of Oxley-Frank want Gramm-Leach-Bliley clarified. So there is simply no doubt that it ought to be clarified. If that is opening it up, I do not know.

But the Gramm-Leach-Bliley provision says that we are going to have a list of financial services and then we are going to add new ones as there is a change in technology. I have yet to figure out what happened in the 6 months after we passed Gramm-Leach-Bliley so that there is a sudden new change. The last I thought, I thought real estate brokerage existed in 1999 and is not a new invention created for the new century.

One observation made by Mr. Gutierrez is we are asked whether these banks are going to be subject to the same realtor-agent licensing and consumer protection laws. Keep in mind, these same Federal bank regulators have already exempted their charges, their banks from the State predatory lending consumer protection laws.

So no doubt if we let banks into real estate, we will have a chance to have an agent who is exempt from all the State licensing laws and all the State consumer protection laws on real estate agents, and he can sell or she can sell you a home that might have some defects in it because, well, those consumer protection laws do not apply. And they can set up with a loan which under your State law is deemed a predatory loan, but don't worry about that, the Federal regulators have exempted them.

Japan shows us the disaster of mixing banking and commerce, but we are told that it is okay for banks to go into real estate for two reasons. First, financing is important to the consumer on a house, except those houses where there is no financing; and second, that the family is acquiring an important and valuable asset for the family portfolio. Well, let's apply that to some other areas and we will see that these arguments open up a Pandora's box.

In order to purchase an auto, it is very important to get a loan. Poor people, they get a loan or they do not get a loan. That means they get a car or they do not get a car. And that auto is the most valuable family asset in the portfolio of many renters in my district. So that means banks should be selling cars and I would assume manufacturing them as well? Gold is a financial asset, so banks will be in the gold mining business.

It is not the house, I hate to tell a real estate panel this, it is not the house that is the most valuable asset for most American families. It is the education and the enhanced earning capacity of the people who live in that house. And of course, students need loans. So banks can own proprietary technical schools. The arguments in favor of letting banks into real estate lets them into everything from auto manufacturing to appliance stores to boat man-

ufacturing. We are opening Pandora's box. I think it ought to be closed.

But the real reason that I am cosponsoring H.R. 111 is that this one-stop shopping idea with federally insured deposits, the whole idea is you will have the bank as realtor and the bank as lender. My fear is people who do not deserve loans will get them. When I say "don't deserve," I mean these are hard-working people, but I want the Federal insurance system protected by a banker who can say no. Well, it is much harder to say no when the very day that the deal closes, the bank as an entity gets 6 percent right there. That is a huge incentive to say yes.

Now, the consumer will understand this. The consumer will say, I have shaky credit. A bank, using its best thinking, would not make me a loan. Let's go to a realtor who is part of a bank and I will get a loan, and will instinctively understand 6 percent right off the top. And who bears the risk of that? Well, if a series of these transactions go well, the holding company does well. Its real estate agency does well. The lending agency does well. Everybody makes a lot of money. But if a bunch of these transactions go poorly, it is the taxpayer who steps in and says, oh gee, the bank made a lot of loans they should not have made. It looks like they got too turned on by that 6 percent and we, the taxpayer, get stuck holding the bag.

Mr. Mansell, do you have some comments about my observations?

Mr. MANSELL. I think your observations are pretty good. I really do. I think there is a way to actually determine the difference between banking and commerce, and I might suggest that to you. I would suggest that you call both the banks and the realtors at 8:00 Saturday night. The one that answers is commerce and the one that does not is banking.

Mr. SHERMAN. Believe it or not, I know some bankers and certainly some real estate lenders that are available that late. I do not want to characterize one group in this room as harder-working, more meritorious, or even a greater pillar in the community as another. But I would say that if you are selling a physical asset, that is going to be used, whether it is a car. You know, this shirt, I got through a banking transaction.

Mr. MANSELL. Did you use a credit card?

Mr. SHERMAN. Absolutely. And I am not sure that I could have afforded this shirt if banks had not helped me at the time. But I do not expect to see blue size 16 1/2 shirts there at the bank for sale. So I just do not understand why selling a house is financial, but selling a car, a boat, a houseboat, a boat big enough to have a house, an RV I could live in, a car big enough for me to sleep in, is somehow a financial transaction.

With that, I yield back.

Mr. LEACH. Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman.

All this is a stunning amount of information I am trying to process here. I have got notes everywhere. I will make some scattered observations, but I will close with one question just in case the witnesses might want to go to sleep on me.

The idea of competition is basically one of pressure and pressure is both a good thing and a bad thing. Being a small businessman, buying a small business with four employees and competing with an international competitor that tried to grind the financial life out of my wife and me actually exposed me to many of the plusses and minuses of competition and of pressure.

When I hear the terms of competition used today, I am stunned. I am overwhelmed. I hear the ranking member say that he is all for competition; that competition is a good thing. I suspect if I ask him to cosponsor the Davis-Bacon Act with me, he might have a different perception on exactly that kind of competition, which might not be such a good thing.

I have heard the banks are very concerned about the bright line between primary and secondary markets. I have heard about them not wanting to compete back and forth. I have heard the concern from the banking industry about the size of our GSEs, and those are appropriate concerns. Basically, we are operating in a regulated market, and as we begin to talk about competition I think we should be very aware.

In the oil and gas business, there is high, high, high pressure at a wellhead. There is a fascinating thing called a "one-way check valve." A one-way check valve allows all the pressure on one side and no pressure on the other side. So if I am going to look at this situation here, and we are talking about, we have heard discussions on barriers to entry, that we have a barrier to entry between banks and real estate, but I suspect if we turn the equation around and look backwards, the barriers to entry are more extreme.

If I am a real estate agent, a single agent in business in Hobbs, New Mexico, where I come from, I suspect that the barriers to entry to banking are a little more severe than the barriers in the other direction. I think if I am going to organize a bank, and you have organized three, Ms. Duke, I suspect that you are going to need between $6 million and $8 million of capital, and if I want to operate a real estate business, I probably can do it with a used 1957 Chevy that is parked in the backyard.

I think that we throw this term "competition" around very loosely when there is only pressure that can be applied one way in the system. I hear Mr. Eastment saying he does not really get concerned with the banks being involved in the real estate business. But I am concerned when I look at Japan and I realize that the problem with Japan's economy is they built themselves an economy that is almost dead because they allowed banks to get into the business of loaning to real estate and being partners in the businesses and the manufacturing. The intent was to build an economy that simply dwarfed the rest of the world and it failed, and they felt like they were competitive.

I worry that we would build a model here that would do the same thing in the name of competition. In truth, there is not competition from the real estate agent and the corner grocery store in Hobbs, New Mexico, backward toward the megabanks. I will tell you that if we make a mistake in this, that the life will be ground completely out of the rural economies because it will not be banks in Hobbs, New Mexico that compete for real estate in New York.

It will be the banks in New York who come down and sell the real estate in Hobbs, New Mexico.

We are in a regulated environment and we need to understand it and we need to be very judicious. I disagree with my colleagues who said that we had a carefully crafted compromise. I do not care how careful it was. If it was not correct, then we need to think about what we are doing very, very seriously because it is the rural pieces of this country that sustain a great percent of it. Everything that we do that goes large against small, urban against rural, is choking the lifeblood out of the small communities.

My wife and I had a business with 50 employees. We were there when the banks began to merge, so that we had a New Mexico-owned bank merge to a larger bank and to a larger bank and to a larger bank. At the fourth transition, they did not know my name anymore and I took my 12 years of business back down to someone who knew me locally.

So, Mr. Chairman, I appreciate the fact that you are trying to solve a problem. I think I am a little curious about the barriers to entry because they exist one way and they don't. The pressure in this situation is all going to move one way without the ability for small, independent real estate agents to compete backward toward banks. I will delete my question. I see I am out of time.

Thank you, Mr. Chairman.

Mr. LEACH. Thank you for those thoughtful comments.

Mr. Hinojosa?

Mr. HINOJOSA. Thank you, Mr. Chairman.

I agree with many of the points that Congresswoman Biggert articulated. The reason is that the district that I represent has many, many small- and medium-sized entrepreneurs, an area that for 3 decades had a double-digit unemployment rate. It has taken creating lots of new businesses that are not capital-intensive to be able to put a lot of people to work. I heard several of the Members of Congress here talk about the importance of real estate because it is very flexible, the flexible hours that realtors have. That is something that is extremely important in the region that I represent.

It seems to me that it is very appropriate to determine if the current structure provides the best protection for consumers, especially low- and moderate-income households outside the mainstream financial system. I represent about a 360-mile geographic area from south Texas to central Texas. Many of the constituents I represent are listening very attentively to how Congress is going to resolve this debate that we are engaged in today. Unfortunately, a majority of the Hispanics fall into this category of low to- moderate-income households. I agree with Mr. Mansell that these individuals might not benefit from bundled realty services designed for bank clients with greater resources.

The potential adverse affects of allowing banks, their subsidiaries, or financial holding companies to conduct the activities proposed by the Treasury Department and by H.R. 2660 far outweigh any public benefits. Our job in Congress is to protect the consumer. We do so via regulatory oversight and through legislation, as was the case with the Gramm-Leach-Bliley legislation and is the case today as we consider H.R. 2660 and H.R. 111. Maintaining the sep-

aration of banking and commerce is one way to protect them. H.R. 111 will do just that. It is for these reasons and more that I became an original cosponsor of, and support to this day, H.R. 111, the Community Choice in Real Estate Act.

I would like to ask a question of Mr. Eastment. Insurance agents were opposed to allowing banks to broker insurance. Now that banks can do this, what have been the effects?

Mr. EASTMENT. Honestly, I have to say I do not know. We have a small insurance agency. We have had it for 30 years. That issue never reached our level, so I really have no comment on the effects of banks in the insurance business.

Mr. HINOJOSA. Okay. Then I will ask another question of Mr. Mansell. We have focused on the benefits to banks of owning real estate brokers. What, in your opinion, would be some of the negative effects on real estate brokers if real estate is considered to be financial in nature?

Mr. MANSELL. I think the biggest danger is just the size of the institutions and the risk for the federally insured deposit groups. Frankly, we are not very worried about the competition on the street. What does concern us is that their ability because of their financial strength to do some things would be quite dramatic compared to the rest of the real estate business.

As was described earlier today, they could certainly, through various benefits that they could put together, I do not know that I want to call them "tie-ins" because I understand there are some anti-tying things in there that would prevent that, but certainly some benefits within that would make it very difficult for others to compete.

Consequently, that is our biggest fear, is that you will drive down competition. I do not know how anybody can say the real estate industry, with 300,000 companies and 1.5 million licensed realtors, is not competitive in this Nation. It is probably as competitive as anything there is that I am aware of. So I think the biggest danger would be consolidation and eliminating choices for consumers by consolidating the services and eliminating members of the business.

Mr. HINOJOSA. Do you believe that the banks would take the lower profits while they drive out as many realtors as they can, and then bring up their prices or their costs?

Mr. MANSELL. I do not want to say. I do not know what the banks would do, but certainly that is a possibility. I guess I would look at the insurance industry and ask the question, have premiums gone down since banks got into the business? Has it gotten better? I know there was a request by, and I do not know who it was in the Congress, for a report on that very issue, about whether the change with banks in securities and insurance has been beneficial or negative to the consumer. As far as I know, and maybe Mr. Leach could tell us that, we have been unable to get that report back.

Mr. LEACH. The time of the gentleman has expired.

Mr. HINOJOSA. Thank you, Mr. Chairman. I appreciate the opportunity to ask those questions.

Mr. LEACH. Mr. Neugebauer?

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Just for the record, in my past I have worn two hats that are sitting at the table today. I have been a banker, did commercial and real estate lending, in fact even owned an interest in a bank, and then for over 33 years I have been a licensed broker in the State of Texas. Unfortunately, I do not get to come to this table wearing any hats. I am wearing the hat of the people.

I think one of the questions that is before this hearing today—and I think it is appropriate that we finally have a hearing on this issue, I think it has been very productive—is whether real estate brokerage is a commercial activity or a financial activity. The legislation that was passed was silent on that. So I think it is appropriate that the chairman have this hearing.

I think the issue for me as I begin to look at it, and it is one of the pieces that I did not hear discussed today, and that is the issue of fiduciary. As a former banker, I had many, many occasions where my customers were coming to me and thinking about leasing a particular space in a shopping center or leasing a building for their operation or building a building for their operation or buying a building for their operation. They came to me for my counsel and my advice on whether that was a good overall strategy for their business as a small businessperson.

I think the question today is if I am sitting in a loan officer's desk and there is a substantial commission involved in the brokerage, in that transaction, am I going to be able to give my customer the same objective information or advice that I would give them if I was an independent party?

I go to the fact that the financial institutions, there is a precedent that this Congress has set about financial institutions, of them having a fiduciary responsibility. In fact, the last several Congresses have gone to great lengths to make sure that there is a firewall on certain kinds of activities. For example, in the securities business, those people that are underwriting certain issues should not be necessarily selling those and giving advice to customers to buy those.

We have just looked at Sarbanes-Oxley, where we said to the accounting industry and others that we have to make sure that there is independence in the evaluation so that when that information and advice is given to the consumers and to the general public that there is protection for those people.

So I think as we go forward in this debate, I think one of the things that we have to begin to say is, and the Japan example is a good model, is there a reason that when we look at the difference between a commercial activity and a financial activity, is there need for there to be that fiduciary piece of that to not only protect the soundness of the financial institutions, making sure that they are not making lending decisions based on real estate commissions, but they are making those based on sound banking principles.

And are the individuals, the people that are relying both on the broker and the banker to give them clean, objective, independent advice on, is that transaction in their best interest? So as we move forward, I think we need to look at that particular issue. I love competition. I love to compete, but I like fair competition.

One of the things that I think was interesting was that in this previous legislation that land development was taken out of the

picture for that. As someone who was in the real estate business in the 1980's in Texas, I can tell you that was a very easy decision for the regulators to come up with because they had to come back and clean up a very ugly mess where lending institutions did get into a business that they knew little about, and risked huge amounts of capital of those institutions and in fact broke those banks, and also cost the American taxpayers a fairly substantial piece of change.

So I think as we move forward if we are going to talk about competition, and I kind of associate myself with Mr. Miller, is if we are going to say that there should be very little differentiation between a financial and a commercial activity, then we should then open the doors up. We should have the Bank of Wal-Mart and we should say that there is no discrimination between what an entity or a corporation in America, the businesses they can get in. But we have chosen not to take that course.

It is not just legislation that was passed 50 years ago. It is legislation that we continue to pass on a continuing basis where we say there has to be some transparency; that there have to be some firewalls; that there has to be some independence in certain kinds of transactions.

One of the things as a former homebuilder I knew that I was sitting at a table with the single largest purchase that most families make in their life. We needed to make sure that what we were doing was in their best interest. So as we proceed on this legislation, I think what we need to do is be very, very careful that we make sure that we are doing what is in the people, the customers of both the realtor and both the banker, we are doing what is in their best interest.

I yield back the balance of my time.

Mr. LEACH. Thank you very much, Mr. Neugebauer.

I apologize for going in order, Mr. Davis. It would be Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Leach.

Welcome to all of you. It is good to see you here today and thank you for the conversation.

I just want to follow up on Mr. Watt. I am coming from where he was coming from. What I take from the first panel is that, when I was able to decipher it, it ensures that the Fed was given under Gramm-Leach-Bliley the flexibility to determine what would constitute what is financial in nature; that if they considered something new in terms of finance in nature, then under Gramm-Leach-Bliley the banks may very well be able to enter into those activities.

It would appear to me that language in appropriation bills that prevent the Treasury from actually promulgating regulations and rules with respect to what constitutes again new financial activities flies in the face of GLB as far as I read that.

Saying that, I also recognize the importance of the work and the contribution that many of my local realtors are engaged in. I believe, as I think Mr. Watt was saying, that there is some room here for compromise, not the Oxley-Frank bill nor the Calvert-Kanjorski bill, but a bill maybe in the middle ground that has yet to be determined. I think that we have the ability and we have an opportunity

to continue in the spirit of what GLB was I think originally attempting to do.

I just want to ask both Mr. Mansell and Ms. Duke whether or not you believe there really is any opportunity for any compromise at all here, or is this cut and dried with no ability for any compromise. Either one can go first.

Ms. DUKE. I will start. I will say that not only do we believe that there is room for compromise, but that is something that we would welcome. It is an uncomfortable position for the banking industry to be in an antagonistic position with the realtors. If we were not in industries that were closely aligned, we would not even be having this discussion.

As far as experience, the experience I go on is the experience in the State of Virginia where we had a very similar situation and our legislators came to us and said, we do not want to be the arbiters of this fight; we want you to sit down and come to a conclusion and come to a bill that you can both support, which we did. That process has gone along very well. That passed 2 years ago.

Since then there has been to my knowledge one bank that has affiliated with, and it is a local bank, affiliated with the two leading local real estate companies. As a further coincidence, that realtor was actually a member of my board and had been a long customer and a friend for a long time. He left our company and went to the company that had purchased a real estate company.

The third thing I would say is that my current representative, the representative that I have in this Congress, is a realtor in Virginia who participated in that compromise and I think if you asked her she would say that it was a very good process.

Mr. CROWLEY. Mr. Mansell?

Mr. MANSELL. Thank you. It is very difficult for us to say, yes, let's negotiate a compromise on something where you are actually giving up the tool before you ever start because for us to say, yes, we will let the banks into the real estate industry with these provisos, knowing full well that it is only a matter of when they come back and try and change some of those, that it is very difficult for us to sit down and say yes, in good conscience, we can do that.

I guess I would say what we might work out is something where you leave this decision made for a period of time.

Mr. CROWLEY. You leave—I am sorry?

Mr. MANSELL. You leave this decision unmade until the marketplace has a demand. As I look at the marketplace, I still have never been shown where the market pressure is for this change. What has changed in the market that is demanding this? The chairman said to create more competition. Well, you cannot have much more competition than we currently have in the real estate industry, and frankly I think you can make a better case that this will drive competition down.

So the question I would have for you is, where do we start if the presumption is by agreeing to sit down and negotiate we are agreeing to allow the banks into the real estate business as a presumption of those negotiations. What might be smarter would be to say that this decision is not ripe enough yet and the marketplace is not ripe enough yet to make the decision so let's not do that now. You could make that case easier, I think, than the other one.

Mr. CROWLEY. My time has expired.

Thank you, Mr. Chairman.

Mr. LEACH. Thank you.

Mr. Tiberi?

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

Thank you all for coming.

Mr. Mansell, back in the 1990's as a State legislator, I led the fight to open up competition for the real estate industry for brokers to go into ownership of title insurance companies and mortgage lending. It was in the name of competition that I did that, with the Ohio association's support. It was also the opponents who claimed that real estate brokers would buy up all the businesses and title insurance companies would go away and lenders would go away. That has not happened, by the way, in Ohio. In fact, I think it has been good for the industry and good for consumers in Ohio, what we did.

Interestingly enough, I think you and I would agree that in your testimony you mentioned you have 1.2 million members. I think you and I would agree that is the strongest asset that NAR has today, its members, its 1.2 million members in each of our congressional districts.

I was a member of NAR in the 1990's and still have friends in Ohio who are members of NAR. People in the offices that I worked in were always concerned mostly about the three-way agreement. I am not going to go down that road today. You and I know what we are talking about. Members on this side of the fence mostly do not know what I am talking about.

But your group, NAR, is a grassroots group. I have heard over and over from members in this body and from NAR that this is an issue that is coming from the grassroots. I find it pretty interesting because of the friendships that I have back in Ohio, this is not the top issue. I find it ironic that even after great work on your behalf, your national office's behalf in Ohio, through advertising, direct communications with members, members of your organization, and even pre-printed letters, and as of this week, NAR staff going into my district, meeting with NAR members in my district, that it is ironic that it is really not a grassroots effort, but it is a top-down effort to stir up my membership as a former member of the association.

What is difficult for me and that I have not understood, and I would love your thought on it, is, as I said, I led the effort back in Ohio to open up the marketplace and competition was what we talked about. You mentioned consolidation today. The second-largest owner-broker in my marketplace is a Coldwell Banker owner that is not locally owned, by the way, that is now a group office and has many great members and friends of mine. It is the combination of three formerly locally owned offices and now Cendant owns that.

Most consumers do not know that. Most purchasers do not know that. Most sellers do not know that it is not locally owned. And yet in my community, the Coldwell Banker affiliate which is not locally owned is very active in the community, and has not done some of the things that opponents of consolidation in the market have said it was going to do with respect to the real estate business.

What I cannot cross, what has been difficult for me philosophically as a person who was making your arguments, NAR's arguments for competition, for allowing real estate brokers to diversify, sitting across from the title insurance and a mortgage lender saying this is not bad for the industry; you are still going to be part of this industry; this is good for the consumer; real estate brokers are not going to gobble up everything. Then coming here, and suddenly the talking points for the real estate brokers are different from the talking points that I had not only as a realtor, but as a free market person arguing for the real estate broker back in Ohio.

So I have not been able to come to grips with the argument that I made before, that it was okay to have competition. It was okay for a real estate broker to be a title insurance owner with proper disclosure. It was okay for a real estate broker to be in the mortgage lending business with proper disclosure. You know as well as I do that we, realtors, are the first person to interact with the consumer. We represent the buyer. We represent the seller.

You mentioned it earlier, the title insurance comes later. The mortgage lending comes later. We are the trusted one up front. When I signed as a buyer or when I signed as a seller an agreement with my realtor, that realtor in many cases, whether it is Coldwell Banker or a Real Living agent or a Re-Max agent says, oh, by the way, I have to tell you about our title insurance company that we are affiliated with and our mortgage lending service that we are affiliated with, proper disclosure. Why is that okay for me and you, but not okay for the banker down the street to do the same thing?

Mr. LEACH. I would like to ask the gentleman to respond relatively briefly because his time has expired.

Mr. MANSELL. Which part do you want me to answer first, the first part of your statement or the second? I am trying to remember the first part.

You talked about the grassroots effort and you talk about this being a top-down effort. I can tell you that we did some surveying to make sure that was not the case. Our membership came back to us at 94 percent saying this was very important to them. It is true that here in Washington with our staff, they have to do a lot of things and make some decisions and go out and notify people about what is going on here. But had you been at our board of directors meeting here in May and gotten the sense of how our board, which are grassroots folks coming in, how they feel about this issue, you would have no doubt that this is not top-down. This is bottom-up.

I will grant you that in Ohio, we probably have had a slower process of penetration and getting the masses moving there simply because of the chairman of this committee, because they did not want to irritate him. I think if you go back and check with the leaders of the association there, it would be very interesting today to see how they are feeling.

Mr. TIBERI. Just to say, most realtors in my district do not even know who the chairman is. They are not paying attention to the politics.

Mr. EASTMENT. May I make a comment on that question?

Mr. LEACH. Briefly. Mr. Davis has been waiting, but please.

Mr. EASTMENT. I would echo the comment that this is not a grassroots issue. The vast majority of Long and Foster's 15,000 realtors, when I talk to them, do not even know about it or do not care about it. They are concerned with whether there are not enough listings; how they are going to get this first-time home buyer into a home because of price appreciation; how they are going to get him a loan. Those are the issues that they care about. The ones I talk to that even know about the issue see this as up on cloud nine and not really affecting them.

Mr. LEACH. Thank you.

Mr. Davis?

Mr. DAVIS OF ALABAMA. Thank you, Mr. Chairman.

Let me, having the dubious distinction of being the only thing separating you all from your cars and your taxis, let me try to cover several different areas quickly, filling in some of the blanks that may have been left by this hearing.

Ms. Duke, let me start with you. One of the words that we have heard over and over today is competition. We have heard arguments about the value of competition, and I think on both sides of the aisle as an abstraction. We like the idea of competition, but I want to scratch the surface a little bit and ask a separate question.

I am always concerned when I look at these issues as to whether or not there is a class of consumers or a class of potential home buyers who are not being well-served by the current real estate structure and market in this economy; who somehow would be served if banks were given this new authority to push into this area. So I want to ask you briefly, because of our time, to tell me if there is any identifiable class or category of consumers or would-be home buyers who are not being served by the current market who the banks think they would reach.

Ms. DUKE. First of all, I would say that the banks will not even go into the business if they do not believe that there is an unserved market there that they can serve better than the existing ones.

Mr. DAVIS OF ALABAMA. Again, I do not mean "market" in the sense of customers that we do not have that we want. I mean identifiable categories of people who are not being served.

Ms. DUKE. To your point, I think it would be the same group that we target with our CRA outreach activities. These are low- to moderate-income areas, and banks have numerous, numerous programs to outreach both in terms of lending and in terms of education. Those areas, I think, would be well-served as well by the banks' activities in real estate.

Mr. DAVIS OF ALABAMA. Let me ask you the logical follow-up that comes from that. I recognize that the CRA as it is currently structured involves only lending activity by banks and that real estate activity does not neatly fit in that category. Given what you have just said, given that you think that banks would have an ability to reach this class of consumers who are covered by the CRA missions of banks, would the banking industry be willing to take on CRA-like obligations with respect to its real estate activities?

Ms. DUKE. I think it is certainly something that we should talk about. All of it gets down to details and gets down to structure and the cost versus the benefit.

Mr. DAVIS OF ALABAMA. Let me stop you there for a second, because I think that is an important point that I have not heard your industry previously make. I think that would be important, and it sounds like you are agreeing with me that if the banks were ever given the authority to push into the area of real estate, that there would be a willingness to take on some responsibility to weigh the values of community reinvestment. Do you agree with that?

Ms. DUKE. I agree with that in concept.

Mr. DAVIS OF ALABAMA. Okay, because that is important.

Ms. DUKE. As long as we understand that we need to get to the details.

Mr. DAVIS OF ALABAMA. Okay. Let me move, and Mr. Mansell, do you kind of agree with that? Do you kind of agree that if the banks are given this new authority to push into the area of real estate that they ought to be obligated to take on some CRA-like obligations?

Mr. MANSELL. To be honest with you, I have not ever given any thought to that.

Mr. DAVIS OF ALABAMA. Okay. I will move on to another question since our time is limited.

Let me ask you, Ms. Duke, this set of questions. I think Mr. Neugebauer had a very good line that he was pursuing around the question of conflict of interest. His comments were very powerful, but I am not sure you all ever got a chance to address them. So let me briefly ask you, recognizing that in a lot of these transactions, there would almost be an implicit kind of conflict of interest woven into the arrangement.

Give us some legislative advice. What could Congress legislatively do to make sure that there was not just an ethic in place, but practical safeguards for consumers who might be caught in the middle of this dual interest if real estates move into this area? Briefly.

Ms. DUKE. I am not sure I can come up with a mechanism, but I would say that in terms of the agency role, the agent's responsibility is to do what is in the best interest of the consumer. And whether the conflict comes from the lure of the real estate commission or the lure of the profit on the sale of the mortgage loan, there might have been a point in history where you could have determined it was not advisable to combine in the same company the agency activities of real estate with the activities of making loans. But the fact of the matter is that takes place. It takes place every day in real estate companies. It takes place and can take place in insured institutions, savings institutions, credit unions and State-chartered banks.

So I could make the case that those two did not belong together, but the fact is that they are. Since they are, if you put those two in an insured, regulated, examined depository institution at least you have examinations going on with people in the bank on a regular basis looking to ensure that they are complying with every one of those regulations.

Mr. DAVIS OF ALABAMA. Let me make just one last point because my time is up. It strikes me that as we are in a commercial world that is becoming more and more complex, and as mortgage lending is becoming more and more complex, the whole business of trans-

action real estate is becoming more and more complex. One of the things that we know as an institution is that a lot of even very sophisticated consumers do not know what they are signing or understand the implications of it.

I do not want to see us move into a world where there is more conflict of interest woven into the transaction without, frankly, greater information being dispensed to consumers. That is frankly the reason that I am on one bill and not the other one, while I am probably more sympathetic to Mr. Mansell's position because I think Mr. Neugebauer got it about right, that you are in every single transaction and would have some layer of conflict. Yes, good, prudent people would try to avoid it; good, prudent people in the industry would try to avoid it, but it would be there.

I do not see a mechanism that would regularly inform and educate consumers about how to navigate through this. Again, the final point I will make, the reason we are struggling with subprime in this economy right now and mis-uses of subprime is because there is no ethic in place or that we have found a way to underwrite in the financial services world that you deliver the best product to the consumer after measuring that consumer's interest. That is the ethic in lawyering. That is the ethic in doctoring. It is not the ethic, unfortunately, in the world that you deal in. I think that is a huge problem.

My time is out.

Mr. LEACH. I want to thank you for those prescient observations.

Let me bring this to an end and simply thank Ms. Duke. I thought that was a splendid defense of the banking position.

Mr. Mansell, you are in a real minority position today and you conducted yourself with great aplomb. I think your perspective has to be considered.

As far as Long and Foster, you are one of the great realty companies in the country. I am impressed with your testimony, sir. We are honored you are with us.

Mr. EASTMENT. Thank you, sir.

Mr. LEACH. I think this committee has a greater understanding of the depth of this issue. It is a very difficult one and it is one that reflects strong feelings in many different camps and good logic on both sides of the argument. So we thank you all.

The committee is adjourned.

Oh, excuse me. Before adjourning, Chairman Oxley wanted, and I would request unanimous consent to place in the record a first-class memo of Covington and Burling on the history of the legislation as it relates to real estate. Without objection, so ordered.

The committee is adjourned.

[Whereupon, at 1:06 p.m., the committee was adjourned.]

A P P E N D I X

June 15, 2005

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

June 15, 2005

"Protecting Consumers and Promoting Competition in Real Estate Services"

Good morning. Today we have the honor of receiving testimony from the authors of one of the most significant pieces of financial legislation ever enacted – the Gramm-Leach-Bliley Act, which repealed anti-competitive restrictions on the financial services industry that had been in statute since the Great Depression. These gentlemen have agreed to come before the Committee this morning to explain the intent of this Act and to highlight the reasons particular provisions were drafted in the manner that they were. Unfortunately, Chairman Gramm was unable to join us, as he is tending to matters in Europe. In his place, I would like to thank our colleague, Representative Hensarling, a member of Chairman Gramm's staff in a former life, for agreeing to deliver his comments for the record.

The Gramm-Leach-Bliley Act permitted financial holding companies to engage in activities that are financial in nature, or incidental or complementary to the offering of financial services. The effect of this landmark legislation was that banking, insurance, and securities services could, for the first time, be offered by a single entity. This Act modernized our financial industry and did away with artificial barriers to competition in these markets. In their wisdom, the authors understood that the financial marketplace was an evolving one and that if this legislation was to stand the test of time, it would have to be periodically updated. This flexibility was built into the Act through a provision that permitted the Treasury Department and the Federal Reserve Board to determine, through the rule making process, that other activities are financial in nature or incidental to such activities.

In 2001 the Federal Reserve Board and the Treasury Department exercised their authority under Gramm-Leach-Bliley by issuing a proposed regulation defining real estate brokerage and management services as financial in nature. The agencies have never been able to finalize their rule, however, because provisions have been inserted in every appropriations bill since 2001 at the behest of the National Association of Realtors prohibiting the Treasury Department from expending any funds to implement the regulation. I, along with the Ranking Member of the Committee, have consistently objected to legislating on appropriations bills in this manner. To that end the Ranking Member and I have introduced legislation, H.R. 2660, which would amend the Bank Holding Company Act to state that real estate brokerage and management services are financial in nature. I regret that it has come to this, but this Committee cannot sit idly by while the appropriators run roughshod over our jurisdiction and single-handedly frustrate the objectives of financial modernization that the distinguished Members of our first panel worked so long and hard to achieve.

We will hear the argument today that the offering of real estate brokerage and management services was specifically excluded under Gramm-Leach-Bliley because these services are commercial, not financial, in nature. The fact is that there is **nothing** in the Act or in the legislative history of the Act which speaks to the issue of real estate brokerage or management. On the contrary, while the Act specifically prohibits bank subsidiaries from engaging in real estate **development** and **investment**, it is utterly silent on the separate issues of real estate brokerage and management.

Moreover, particularly with housing prices at record levels, the purchase of residential real estate is, for most Americans, the most significant financial transaction that they will ever undertake. It is a transaction that often involves highly sophisticated financial instruments to finance it, and the vast majority of Americans' net worth resides in the value of their homes. Additionally, credit unions, thrift institutions and state-chartered banks in over half the states have long been permitted to offer real estate brokerage services.

Excluding one class of depository institution — national banks — from being able to compete on that same playing-field is inconsistent with the goals of the Gramm-Leach-Bliley and with the fundamental principles that should govern free-market economies.

Indeed, free market competition is the hallmark of growth and innovation in our country. Man-made barriers to entry into markets result in monopolies that set the terms of the market and dictate the price. That is what we have today with regard to real estate. The consumer will benefit if free market principles are applied to real estate brokerage and management. Lower prices, improved services, and greater access to affordable housing will be the result.

Regardless of whether banks are eventually permitted to provide real estate brokerage, Congress needs a better understanding of whether the current rules for residential real estate brokerage are in the best interests of consumers.

Few people understand how the NAR functions as a self-regulating organization. If its rules promote competition and consumers, why is the Justice Department suing the NAR over its rules blocking Internet brokers from displaying homes for sale on their websites? How are these rules consistent with a broker's fiduciary duty to the home seller?

Furthermore, what is the relationship between the NAR and state realtor associations? Could it possibly be in the interest of consumers for state realtor associations to ask state legislatures and realty commissions to adopt requirements preventing realtors from rebating part of their fees to consumers, or preventing consumers from choosing low-cost discount brokers? The Justice Department is suing the Kentucky Real Estate Commission over just such rules.

On March 15, Ranking Member Frank and I wrote to the Government Accountability Office asking it to survey the state of price competition in the market for real estate brokerage services. This follows my GAO request last November on whether there are barriers to electronic commerce in real estate. We need to look broadly at consumer protections for home buyers and sellers, and this Committee will continue to do so.

Let's forget about fighting among the various lobbyists and remember what's really important, and that is how can home buyers and sellers get the best real estate services at the lowest possible prices? Competition is always the answer to that basic question, choice is always the answer to that basic question. There is not enough competition in these real estate markets, and that is what we seek to remedy.

I look forward to hearing from the witnesses regarding the intent of the Gramm-Leach-Bliley Act and the impact that increased competition could have on the marketplace and on consumers.

Statement By Congressman Richard H. Baker

House Committee on Financial Services

Hearing Entitled: Protecting Consumers and Promoting Competition in Real Estate Services

Chairman Oxley, thank you for holding this hearing on competition in the real estate market. As a member committed to the free market principles that have created and sustained the strongest economy in the world, let me simply say that competition matters. Competition helps consumers by keeping costs down and by forcing markets to innovate.

In a competitive market, consumers reasonably expect better pricing and better products. But is this what the real estate market is offering consumers? And, more importantly, is the current effort to restrict the entry of additional firms in the real estate market place actually about better pricing and better products for consumers? I am not so sure it is.

According to Realtor.org, a real estate-related website, in 2004 the average single-family home purchased by the average homebuyer cost $184,100, generating approximately $65 billion in real estate commission fees paid by consumers. In my opinion, the current discussion about competition in real estate is a result of an effort by one group to keep as large an amount of these fees for themselves as possible by keeping out potential competitors. Otherwise, I see little reason for some to expend such great effort to deny a competitor's entry in the real estate brokerage market.

Some argue that the discussion really is about competition and consumer choice; that it is about ensuring the real estate market is not dominated by massive corporations that will destroy the "mom and pop" real estate agency. The fact of the matter is major corporations already dominate the real estate industry. In 2004 the top three residential real estate firms in the country, Cendant, ReMAX and Prudential, controlled 56 percent of the real estate market. Yet, interestingly enough, if a consumer does want to use a small agency, there are still plenty available.

But, what does this all mean for the homebuyer? Let's go back to the 2004 average home price of $184,100. The average commission price of 6 percent that most real estate agents charge results in a fee of $11,046. This fee is charged if a home is on the market for a mere 6 days or for as long as 6 months. New firms in the market could provide significant savings for consumers by lowering commissions through competition. However, consumers will not have an opportunity to realize the benefit of lower commissions that competition would bring because of the current effort to stop new firms from entering the real estate brokerage market.

Keep in mind the $11,046 is only the commission fee and does not include any other charges associated with buying a home. Any number of services are necessary to close a successful real estate transaction. The costs associated with these services can be lowered if one firm can offer consumers one-stop-shopping for all of their real estate transaction needs. Many real estate brokers now offer their clients not only brokerage services, but mortgages, title insurance and

settlement services as well. If, for example, lenders were allowed to offer consumers one-stop-shopping convenience in real estate transactions there would be more competition, more consumer choice and as a result, lower prices. But, consumers will never reap the full benefits of one-stop-shopping in the real estate market because the government is being used to keep potential competitors out.

Interestingly, it appears that simply keeping out new competition is only half of the strategy. Realizing that not all consumers are interested in or need the full service homebuying experience, some firms have begun to offer a competitive alternative in the form of discount real estate brokerage. Under this arrangement, a consumer only pays for the actual services provided or performed by their real estate agent. And, it looks as if the model is appealing. Businesses like mycastle.com, forsalebyowner.com and ifoundahome.net are examples of discount real estate brokerages that offer consumers a real alternative through competition and innovation. In other words, the companies offer consumers better prices and products that better suit their needs. Amazingly enough, at the behest of some in the real estate market, legislatures in 10 states have attempted to make discount real estate brokerages illegal.

In my estimation, it seems that the powers that be in the real estate profession have adopted a strategy to use the government, at any level, to stifle competition at all costs. Who wins? Certainly not consumers.

Whenever a consumer loses a market option because the government protects vested industry interests, that consumer will always pay more for a service that might not suit their need. Consider the following real life example: forsalebyowner.com will list a seller's home on the Multiple Listing Service (MLS) for a fee of $699. The seller coordinates all other aspects of the transaction. At closing, the seller will likely pay the buyer's agent a 3 percent commission. In our example of an average $184,100 home, 3 percent comes to $5,523, which, when added to the MLS listing fee of $699, results in a total real estate agent fee of $6,222.

This means that by using a discount real estate brokerage option, a consumer could save themselves $4,824 on the transaction. Why is this option so dangerous for consumers? The answer, of course, is that it is not. On the other hand, it is a dangerous alternative for those firms with business models that rely on bloated commission fees.

Some time ago, Milton Friedman, a great defender of free markets and competition wrote, "So long as effective freedom of exchange is maintained, the central feature of the market organization of economic activity is that it prevents one person from interfering with another in respect of most of his activities. The consumer is protected from coercion by the seller because of the presence of other sellers with whom he can deal. The seller is protected from coercion by the consumer because of other consumers to whom he can sell…Indeed, a major source of objection to a free economy is precisely that it does this task so well. *It gives people what they want instead of what a particular group thinks they ought to want.*"

Quite simply, the government's role in the real estate market should be limited to only those actions that promote a fair and competitive market. The American homebuyer has a right to

decide what products and services they need and a right to decide from whom these products and services will be purchased. The government must not be used to dictate choices to consumers.

If the government will not provide homebuyers a competitive real estate market by opening this market up to new competitors, perhaps the government should act to promote competition by product and service line instead. Why not make it simple? Let's go back to the halcyon days of regulated fees and required margins. And, since its so dangerous for a lender to be a real estate broker, why shouldn't the government mandate that a broker must only be a broker, an appraiser just an appraiser, a closing attorney just a lawyer and a lender just a lender. Why don't we just protect consumers and promote competition by keeping everyone out of each other's business?

OPENING STATEMENT OF
CONGRESSMAN PAUL E. KANJORSKI

COMMITTEE ON FINANCIAL SERVICES

HEARING ON PROTECTING CONSUMERS AND PROMOTING COMPETITION IN REAL ESTATE SERVICES

WEDNESDAY, JUNE 15, 2005

Mr. Chairman, thank you for convening this hearing on the pending regulatory and legislative proposals affecting real estate brokerage and management. Although I, like you, want to resolve these important matters, we have very different views on the appropriate solution.

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 very strongly supported maintaining the firewalls separating the financial and commercial sectors.

To underscore our concerns about the integration of banking and commerce, the 1999 law also 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 Gramm-Leach-Bliley Act, regulators unfortunately issued an ill-conceived rule proposal that would allow national bank holding companies and their subsidiaries to engage in these pursuits.

Because this proposal greatly concerned me, I began working to draft the Community Choice in Real Estate Act, which I introduced along with Congressman Ken Calvert. Our legislation would explicitly prohibit national bank holding companies and their subsidiaries from engaging in real estate brokerage and management.

We first introduced the Community Choice in Real Estate Act in the 107th Congress. We also reintroduced the bill in the 108th Congress and the 109th Congress. In every Congress since its introduction, our bill has gained the support of a bipartisan majority of the House. In the 109th Congress, for example, 238 Members of the House have already backed H.R. 111, and we continue to add a few more cosponsors almost every week.

Some parties involved in these long-standing debates have recently begun to suggest that we need to consider a compromise to resolve these matters. I can neither support a compromise that would fracture the firewall between banking and commerce nor an arrangement that would undermine the leadership that our local communities genuinely need.

Moreover, we should refrain from engaging in a lengthy and contentious debate on other legislative proposals in this area or yet-to-be-developed compromises. We should instead consider H.R. 111 as quickly as possible. The Community Choice in Real Estate Act already has the support of a majority in the House. It is the solution that my colleagues are ready to accept.

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 very strongly hope that we will therefore approve H.R. 111 before the end of the 109th Congress.

Remarks
Congressman James A. Leach
House Financial Services Committee
June 15, 2005

Mr. Chairman, Mr. Frank, Distinguished Colleagues:

The background for consideration of financial modernization legislation -- what came to be called Gramm-Leach-Bliley -- was competition between various private sector industries; competition within each of these industries; and competition between regulators of various entities.

At issue today is a review of how Gramm-Leach-Bliley addresses the real estate issue. The subject surprisingly involves all three of the above cited competitions. For instance, there is obviously a competition or potential competition between banks and realtors, perhaps exaggerated because few banking institutions are either desirous or good at offering real estate brokerage services.

This is evidenced by competition within the banking industry itself. Approximately half the states, one of which is my own, for a number of years have given state banks real estate brokerage powers. Few banks nation-wide have made much of a dent in the market, in part because the real estate business is so competitive, in part because the entrepreneurial culture of real estate brokerage firms is so antithetical to banking practices. That is, real estate brokers are on the hoof; bankers prefer the shelter of brick walls. The two cultures do not mix.

My personal guess is that smaller community banks have a culture closer to real estate brokerage firms than larger institutions, but the multi-state experiment that is on-going shows that bank associated brokerage firms are respected entities, but incidental to the market.

What is being debated today is whether national banks, less than 10 percent in number but far more in assets, can obtain the same real estate brokerage rights as state banks. The irony is that large banks have higher personnel cost structures than community banks and abhor labor intensive activities. Conceivably, a national bank could, if permitted, buy a brokerage firm, but it is unclear if it could operate it more profitably than the firm would otherwise be operated.

The chances, in other words, are that the issue we are discussing is philosophically more interesting than the practical ramifications of any government decision.

Instructively, a number of states have laws that automatically give state banks any powers enjoyed by a national bank. But there is no reverse law. That is why in the regulatory competition between state and national banks, the national bank regulator -- the OCC -- has a strong bent to attempt through regulation to give national banks whatever powers any state authorizes, and if possible, more authority.

With regard to garnering consensus support for bank modernization legislation during its consideration, a number of non-bank groups relented on their traditional opposition to opening up competition between industries because the OCC was making concerted efforts to unilaterally empower national banks. The law, in its final format, was equalitarian. The powers granted banks

were also reciprocally accorded securities firms and insurance companies. Competition, rather than protectionism, was the aim of the reform legislation.

But we should be clear that OCC activism helped galvanize support for the legislation. Even though there appeared under prior law to be a more constraining standard of flexibility for power-granting than that established in Gramm-Leach-Bliley, the OCC had begun to use a Supreme Court administrative law precedent called the *Chevron* Case (*Chevron v. National Resources Defense Council*), which suggested the courts should give deference to federal regulators as long as they do not act capriciously, to expand the powers of national banks.

Given the state precedents on real estate brokerage activities, it was widely assumed in the late 1990s that the OCC would authorize even greater powers for national banks and their subsidiaries, including the right to engage in real estate investment and development. Indeed, when financial modernization was under consideration, the OCC had pending before it an application from a large national bank to engage in real estate lease financing and limited real estate development activities. This proposal gave rise to concerns in the real estate industry -- legitimate concerns, in my view -- that banks, traditionally suppliers of credit to the industry, would now be competing for credit with that same industry.

What Gramm-Leach-Bliley did for the real estate industry was statutorily to proscribe banks from using federally insured deposit advantages for real estate investment and development. This was done in the context of the great philosophical struggle in the bill, the question of whether commerce and banking would be authorized.

Gramm-Leach-Bliley was principally about rationalizing market trends and repositioning a regulatory structure to accommodate changes in the marketplace. The goal was to enhance competition between and within the banking, securities and insurance industries within a framework of understood rules that would be protective of the public and competitively fair to market participants. In this context, the traditional barriers between commerce and banking were maintained.

While big institutions had garnered the support of political leadership in both parties in both Houses of Congress and initially within the Executive branch, at the end of the day Congress decided not to allow the American economy to follow the keiretsu model of Japan, the chaebol market of Korea or the integrated bank model of European countries like Spain. As chairman of the House Banking Committee and the House-Senate Conference, I was prepared to pull the plug on the bill if the law came to allow a big bank like Citicorp to merge with a big retailer like Sears and an automaker like Ford. If sanctioned, conglomeration of this nature would have come fast and easy. But social benefits would have been hard to establish.

The irony is that there may have only been several hundred people in America -- largely bankers -- seeking these powers, but those who most sought the right to conglomerate would likely have found their jobs most jeopardized. In the middle of what looked like an unstoppable power sweep, I sent every major bank an analysis of the market capitalization of companies which I assumed would have a vested interest in moving promptly to assimilate banks under their corporate umbrellas. Banks in my view would have been the purchased, not the purchasers. Companies like AMOCO, GM, WalMart and Microsoft had far larger market capitalizations than any bank and a lot more reason to control a financial institution than vice-versa. Incidentally, in the late 1990s Enron and Worldcom

also had market capitalizations large enough to knock off a money center bank. How bizarre and troubling in retrospect this would have proven to be if such had taken place.

The realtors, like most of American commerce that paid attention to this issue, were adamantly opposed to mixing commerce and banking and thus were ecstatic that their position prevailed over the larger banks on that seminal issue. It is no accident the National Association of Realtors ("NAR") was sympathetic to passage of the bill. They understood they were worse off without a bill and much worse off with a differently designed product.

In terms of legislative history, the committees of jurisdiction chose to adopt the NAR position and prohibit banks from engaging in real estate development and investment, but allowed the legislation to be silent in brokerage activities. This was not an oversight. If memory serves me right, the report language but not the text of the first version of Glass-Steagall reform that I introduced as chairman of the Banking Committee referenced the brokerage issue, but the banking community persuasively pointed out to committee members in subsequent Congresses that not only was banking evolving, but so was the way real estate brokers conducted business. The banking industry argued that because sophisticated real estate brokers were not only offering insurance products but also providing credit to clients by offering mortgage banking services, it seemed unbalanced to legislatively bar bankers from entering the business of an industry which competed against them. The committees thus chose not to tilt in any direction on the issue and left decision-making up to the professional regulators.

As one of the authors of the legislation, I have taken the position not to endorse any approach or give regulators any post-legislation advice. The law was intended to be flexible, adjusting to new times in new ways, without Congressional prejudice.

Finally, a note about regulatory competition. Gramm-Leach-Bliley was intended to seal the gaps of regulation by not only ensconcing functional regulation but by establishing a primary regulator so accountability could not be ducked. It also was designed to make regulation more seamless and less competitive. On this issue, for instance, the Fed and Treasury were provided shared authority so that the OCC, which regulates national banks and the Fed which regulates state banks as well as holding companies, would apply together consensus judgment. From the real estate industry perspective, it was considered a significant plus that regulatory cooperation and coordination was legislatively mandated because the NAR had a greater comfort level with the Fed and the Treasury than the Treasury's quasi-independent arm, the OCC.

In conclusion, let me stress that the Gramm-Leach-Bliley Act was the product of many years of legislative debate. The final legislation was designed to ensure that the evolution of the financial services industry would not be impeded by protracted Congressional interference. The process of defining new powers for banks and financial holding companies was, by intent, "depoliticized" under the Act.

In America, process is our most important product. It is process, as much as outcome, which Gramm-Leach-Bliley is about. In this case, the silence of the Act on real estate brokerage activities makes it subject to review by regulators. This review, however, should not be one which assumes a Congressional bias on result. There is nothing in the hearing record or report language which indicates a direction that regulators should take, with the exception that any judgment of regulators

would have to accommodate an assortment of anti-tying mandates of Gramm-Leach-Bliley and other restraints established in other banking statutes such as the Bank Holding Company Act.

Thank you.

Collier Shannon Scott

Collier Shannon Scott, PLLC
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007
202.342.8400 TEL
202.342.8451 FAX

Testimony of
The Honorable Thomas J. Bliley, Jr.
Senior Advisor
Collier Shannon Scott

before

The U.S. House Committee on Financial Services

"Protecting Consumers and Promoting Competition in Real Estate Services"

June 15, 2005

Chairman Oxley, Ranking Member Frank, and Members of the Committee, thank you for inviting me here today to offer my views on consumer protection and competition in real estate services. It's good to see so many old friends. Let me assure those old friends that while much has changed in the 4 and a half years since I left Congress, I have not lost my fondness for brevity.

The enactment of the Gramm-Leach-Bliley financial modernization law in 1999 was a singular event in the nation's financial history. It did away with many of the rules and regulations that hampered economic growth in the financial services industry.

One of -- if not THE -- central aspects of the Act was the creation of a new category of financial institutions known as "financial holding companies ("FHCs")," the logical successors to simple "holding companies" under the Bank Holding Company Act. These new FHCs were given the authority to engage in a full range of activities – that is, "activities that are [quote] "financial in nature or incidental to financial activity" [endquote] -- that were impermissible under Glass-Steagall. As our Committee Report said in 1999, "permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking."

Gramm-Leach-Bliley was supposed to put to final rest the issue of bank agency powers. Congressman Leach and I had

numerous discussions in various forums on the mixing of banking and commerce. The collective wisdom of Congress in Gramm-Leach-Bliley was to generally prohibit any mixture of commerce and banking, to strictly limit certain activities with a significant underwriting risk – such as insurance underwriting and real estate development – and to allow banking competition in agency and brokerage activities.

There is a reason that Congress specifically walled off real estate development and investment. It's not that we forgot about real estate brokerage or had never heard from the realtors. No, we intentionally drew the line at financial activities that put bank capital at risk, while leaving brokerage activities open, fully expecting that real estate brokerage would ultimately be part of that group. This was a careful compromise as we went from

allowing a basket of bank-commercial activities to walling off each activity Congress did not want banks to engage in.

In fact Gramm-Leach-Bliley specifically directed the Federal Reserve Board and Treasury to periodically bring in new activities that are financial in nature or incidental to a financial activity, for example because "such activity is necessary or appropriate to allow a financial holding company …to… compete effectively with any company seeking to provide financial services in the United States." We knew it was coming and created the mechanism to keep the system dynamic.

We could have outlawed any number of other activities. We did not. That's largely because we didn't want the Act to become outdated before the conference report was even signed. In an era of amazing technological innovation and change, we

consciously chose to make the law flexible, to allow the functional regulators – with appropriate statutory guidance -- to define what specific activities should be permissible.

Thank you, Mr. Chairman for the opportunity to be here today. I also want to thank you and other Members of the Committee for seeking to uphold the deregulatory intent of Gramm-Leach-Bliley.

I'm not accustomed to being a witness, so let me use a line from my days giving press conferences as Mayor of Richmond: I'd be happy to dodge any questions you may have.

Testimony of

Elizabeth A. Duke

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives

June 15, 2005

Testimony of
Elizabeth A. Duke
On Behalf of the
AMERICAN **BANKERS** ASSOCIATION
Before the
Committee on Financial Services
United States House of Representatives
June 15, 2005

Mr. Chairman, I am Betsy Duke, an executive vice president of Wachovia Bank and Chairman of the American Bankers Association (ABA). ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions 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 associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

I want to thank you, Mr. Chairman, for having this hearing. Today, as in past hearings of this committee, we want to emphasize that bankers and many in the real estate industry are much more closely aligned on the issue of real estate brokerage than the rhetoric on this issue might suggest. 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 the agent or company with whom they want to do business. And we all believe that the provision of any financial service should be done in a safe and sound manner – including adhering to all state licensing, qualification, sales practices, and continuing education requirements.

Of course, there are differences that distinguish our respective positions on the matter of permitting banks to engage in real estate brokerage and management services directly. We believe the issue boils down to two fundamental issues: (1) the benefits of banks' involvement in real estate, and (2) the appropriate process for determining in which activities banks can be involved.

We believe there is great merit in bank involvement. If nationally-chartered institutions could 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, consumers, real estate agents and real estate companies have ***fewer*** choices.

We believe a competitive market is the best way to provide quality real estate brokerage and management services. Increased competition in a market economy benefits consumers by encouraging innovation, increasing efficiency, and lowering prices. This bedrock principle is true in every segment of our economy. Banks are seeking the ability to enter the real estate brokerage industry and, in doing so, to increase competition to the benefit of home buyers and sellers. Naturally, this added competition would affect Realtors. No business is, or should be, immune from competition. Banks engaging in real estate services would be competing with one another also, just as they do now for consumers' checking accounts and other banking needs. We are not talking about some monolithic, imaginary bank entity that would blot out the market to the detriment of local consumers. We are discussing the ability of thousands of regional and community banks, which are already at work in their local communities, to invigorate the real estate brokerage market with new choices and products at competitive prices. To listen to the National Association of Realtors (NAR), keeping banks out of the real estate brokerage industry is all about protecting customers. In reality, their campaign has been about protecting themselves from the stimulating effects of competition.

This issue of open and fair competition is not new – in fact, it has been debated in this legislative body for many years. 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 issues covered by the Act, Congress often found itself in the middle of arguments between financial services industries about who should be able to 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.

The GLB Act created the necessary and appropriate framework for determining what services banks should be able to provide. 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, ABA and NAR negotiated 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, 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 real estate brokerage and management. ***It was not clarified then, nor was it clarified in the GLB Act.*** Certainly 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. NAR's position, embodied in H.R. 111, is anti-competitive and anachronistic. It would reverse the most important long-term provision in the GLB Act and would put Congress back in as referee for future competitive disputes. Having worked so hard to develop a mechanism to continually keep our financial system up-to-date, Congress should not reverse itself to protect NAR from competition. The system established in the GLB Act should be allowed to work and H.R. 111 should not be enacted. Moreover, Congress should not be asked to choose between banks and

Realtors. This is a choice for consumers to make based on their own unique set of needs and preferences.

With housing prices at an all-time high – costing homebuyers and sellers tens of thousands of dollars with each real estate transaction – there is no better time to allow greater competition into the marketplace. 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. Competition stimulates innovation and encourages effective uses of technology to better serve consumers.

- ***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 that apply to Realtors, 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.

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..

Simply put, ABA believes a competitive market is the best way to provide quality real estate brokerage and management services – more competition means more choices. Circumventing the regulatory process begun by the Federal Reserve and Treasury in 2000 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.

Technology & Competition Should Lead to Greater Efficiencies

Competition is critical to enhancing efficiency. The real estate brokerage market has not benefited from the efficiency gains typical of other businesses that are so information intensive. As Steve BelBianco and Michael Tavilla noted in their study *The State of eCommerce 2002: Beyond the Bubble, Beware the Barriers*: "Few industries stand to gain as much information, convenience, and efficiency from technology as the buying and selling of homes. Yet this industry has been slow to adopt Internet and eCommerce technologies and business models, and has erected barriers to prevent innovation and competition – even from within industry ranks."

Technology has reduced costs. The Internet has driven housing search and property information costs down considerably. More individuals are researching available properties for sale. Buyers can themselves gather key bits of information about property location, flood history, contract status, room dimensions, etc. NAR's own surveys bear this out, finding that Internet buyers spend more than twice as much time gathering information prior to contacting an agent. At the same time, they moved much more quickly once they began to work with an agent, spending much less time with their agent and previewing far fewer homes compared to pre-Internet buyers. Moreover, buyers who used the Internet spent on average two weeks with their real estate agent and looked at approximately seven homes. Pre-Internet buyers spent approximately six weeks with their agents and looked at approximately 15 homes before purchasing.

In January 2004, the California Association of Realtors conducted its 5th Annual "Internet Versus Traditional Buyers Survey" exploring the home-buying process. For the first time in the history of this survey, more than half of the respondents were classified as Internet buyers, defined as those who used the Internet as a significant part of the home buying process. Internet buyers as a percentage of all buyers rose from 45 percent in 2003 to 56 percent in 2004, while the percentage identified as traditional buyers fell from 55 percent to 44 percent. This trend is expected to continue.

With individuals assuming more of the responsibility to gather and assess information, less time and effort is required by real estate agents in assessing market conditions (for sellers) and in identifying and showing houses. The cost of an agent's service, therefore, should go down reflecting this shift in burden.

Technology and efficiency improves the delivery of real estate services. Professors Natalya Delcoure (Mitchell College) and Norm Miller (University of Cincinnati) found that sales commissions are abnormally high in the United States compared to other countries where fewer barriers to competition exist. Out of the 31 countries studied, only four – ***Russia, Belarus, China and Mexico*** – had commission rates higher than those in the United States (see Table 1). Not surprisingly, the study found that commission rates are lower when the "information within the market is more efficient, open, and reliable."[1] Conversely, rates are higher in countries where information is often costly and unreliable in less developed countries – something not characteristic of developed countries with competitive markets.

The authors state: "It appears that commission rates in the U.S. are abnormally high for a country as efficient as we presumed and as price competitive as we would like it to be."[2] Moreover, "It is hard to argue that non-U.S. countries have more efficient communication technology, real estate public information or record access that would lead to lower commission rates."[3]

Table 1

List of Countries by Commission Fees

Country	Real Estate Commission Fee (mode)
Hong Kong	1%
Netherlands, Singapore, United Kingdom	2%
Belgium, Denmark, Italy, Japan, Malaysia, Norway	3%
Greece, Ireland, Israel, Thailand	4%
Germany	4.5%
Australia, Brazil, Canada, Caribbean, Finland, Indonesia, Philippines, Spain, Sweden	5%
Argentina, **United States**	6%
China, Mexico	7.5%
Belarus, Russia	10%

[1] Natalya Delcoure and Norm G. Miller, International Residential Real Estate Brokerage Fees and Implications for the U.S. Brokerage Industry, International Real Estate Review, 2002, Vol. 5, No. 1: page 24.

[2] Ibid., page 28

[3] Ibid., page 14

Simply put, competition drives efficiency, innovation and ultimately the cost of services to customers. Putting in place a system that enhances competition – as the GLB Act clearly did – is the best way to provide value for customers at the best price possible.

II. Gramm-Leach-Bliley Act: Flexibility to Adapt to Evolving Market

The GLB 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. GLB 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 GLB 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

Combining real estate brokerage and banking services is not a new or unusual activity. Securities firms, insurance companies, credit unions, savings associations and, in more than half the states, state-chartered banks can offer real estate services.[4] Ironically, in arguing against banks' entry into the real estate brokerage industry, NAR objects 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's full range financial service program is called, "Weichert Gold Services" and the slogan is "One Stop, Many Solutions." Long & Foster's program is called, "The Real Edge in Homeownership."

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 convenience and more service options. ABA believes that ***all*** insured depositories should have the same opportunities to meet the needs of our customers. In fact, according to NAR's own surveys and others', 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.[5]

---

[4] See attachment developed by the Conference of State Bank Supervisors (CSBS) for a listing of the authorities for each state. Regarding credit unions, in November 1999, The National Credit Union Administration granted federal credit unions the pre-approved authority to offer real estate brokerage services through their credit union service organizations (See 12 Code of Federal Regulations Part 712.5(p)). Since then, numerous credit unions have started to offer real estate brokerage services to complement their mortgage lending operations. For example, WestConsin Credit Union advertises that it now offers full-service real estate services to western Wisconsin at a lower listing fee through WestConsin Realty LLC, a credit union service organization. Credit unions use discount brokers also to cross sell its mortgage products as a one stop solution.

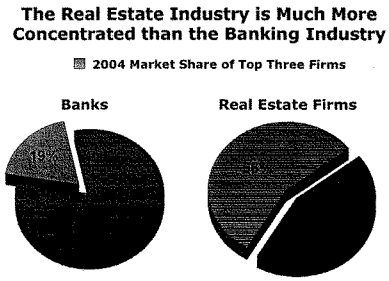
In May 2005, a dozen Pennsylvania credit unions formed a consortium with the Pennsylvania Credit Union Association to create a real estate brokerage, CU Realty Pennsylvania.

[5] Murray Consulting, *Consumer Perspectives on Realty-Based One-Stop Shopping*, April 2002

If many real estate and other financial firms already combine real estate services and other financial products, there is no reason to deny any banking organization 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.

It is not surprising that the real estate industry is increasingly concentrated (see Chart 1). In fact, the top ***three*** firms[6] in the brokerage business control 56 percent of the market. By comparison, the top ***50*** banks have 56 percent of the banking market. Cendant Corporation accounts for one out of every three real estate agents and alone has a 34 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 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 the provision of capital, to compete with the large national real estate firms.

With a more concentrated market than banking, it is ironic that NAR claims 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. Nearly 40 percent of all banks – 3,380 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

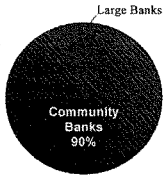
[6] Cendant, RE/MAX, and Prudential Real Estate

offer their customers and to compete with real estate firms offering loans and homeowners insurance.

It is also a misconception that all national banks are large (see Chart 2). In fact, ninety percent of national banks are community banks. Moreover, it appears that half of the 10 largest banking firms 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

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 these banking organizations 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 Federal Reserve 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 Federal Reserve 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 Federal Reserve'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 Federal Reserve 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. In many cases, real estate also serves as a means of wealth creation through increases in value and by providing real economic benefits through the tax structure. 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 Federal Reserve and Treasury, in their request for public comment, noted 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 non-financial 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…"[7] This description of finders authority is the essence of every real estate transaction.

Apart from their authority with respect to these three specified activities, the Federal Reserve 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

[7] 12 CFR 7.1002.

- 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 Federal Reserve 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 non-financial activities. Specifically, a financial holding company may engage in a non-financial activity, or acquire a company engaged in a non-financial activity, if the Federal Reserve 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.

NAR would have this Committee believe that Congress meant to preclude real estate activities in the GLB Act and that the legislation accomplished that goal. This assertion is simply untrue; we have seen no 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 that the Treasury and Federal Reserve are following 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, the Members involved clearly knew how to do so. The fact that Congress chose only to prohibit real estate development underscores the conclusion that Congress did not intend to restrict agency activities.

Certainly 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 Federal Reserve 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 Federal Reserve 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 Federal Reserve to look very closely at any question relating to commercial activities.

As the next section demonstrates, the real estate market is changing rapidly and with each passing day, the competitive imbalances increase.

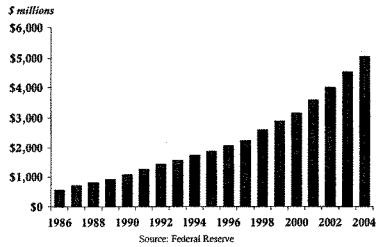
Changing Real Estate & Financial Market Requires a Flexible Regulatory Approach

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.

Chart 3

Mortgage Backed Securities Outstanding



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).

The increasing importance of the secondary market has facilitated the rapid growth of mortgage lending outside traditional banking and savings institutions. 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 Federal Reserve to address.

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 Federal Reserve and the Treasury, subject to certain statutory guidelines, to approve additional activities for banking organizations. ABA believes strongly that real estate brokerage and management meet the criteria. Of course, the Federal Reserve and Treasury have not made any determination on this proposal. Regardless of their ultimate decision, the Federal Reserve and Treasury should be allowed to follow the process Congress created in 1999.

III. Consumer Protections and Safety and Soundness Are Maintained

If these banking organizations could 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. The same potential exists when a small realty firm offers loans through a mortgage banking company. 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")[8] requires realtors affiliated with lenders to disclose that fact to customers before the purchase occurs.

RESPA disclosure,[9] 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. Greater protection results from banks and bank holding companies and their subsidiaries being subject to the anti-tying provisions of the Bank Holding Company Act.[10] These statutory 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 (CRA). 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. These banks would have incentives to 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.

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***

[8] 12 U.S.C. § 2601 *et seq*
[9] 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.
[10] Section 106(b) of the Bank Holding Company Act 12U.S.C. Sec. 1972.

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 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, or 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.

In 2000, as a result of negotiations between the bank and real estate trade associations in the state, the Michigan Banking Code was revised to permit state banks to "engage directly in or own in whole or in part, a real estate brokerage business." The new law also stated that a bank cannot tie

the accommodation of credits to utilization of the real estate brokerage agency, nor can the bank prohibit the customer from going to other financial institutions to obtain mortgage credit. Banks owning or engaging in real estate brokerage activities in Michigan must also clearly disclose that fact in writing to anyone applying for credit or pre-qualified credit related to a real estate transaction.

In 2002, Virginia became the 28th state to authorize real estate brokerage for state banks when the General Assembly opened up the realty business to state-chartered banks beginning July 1, 2003. The legislation enacted in Virginia represented a delicate compromise reached by the Virginia Bankers Association and the Virginia Association of Realtors. The legislation authorizes a controlled subsidiary corporation of a state bank to engage in real estate brokerage.

While the specific provisions in Michigan and Virginia may not be appropriate at the federal level, the fact is that the banking and real estate industries in both states were able to reach a compromise that broadened consumer choice while at the same time addressing any possible consumer or safety and soundness concerns. Allowing banks and all FHCs the same rights and privileges should enhance the competition for real estate services.

IV. Conclusion

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 banks' real estate competitors are touting the advantages of one-stop home buying 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 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 Federal

Reserve 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. 111 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.

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 around the country 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 the NAR-supported bill 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.

More than five 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 continues to put up obstacles to any modernization, content to keep costs high and competition low. Rather than compete head to head, NAR wants to put Congress back in the uncomfortable position of referee. Congress explicitly gave the Federal Reserve and Treasury the flexibility and authority to make these determinations because they have the expertise to understand the dynamic nature of 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.

Written Statement

of

George T. Eastment, III
President
Long and Foster Financial Services

On Behalf of

The Real Estate Services Providers Council, Inc. (RESPRO®)

Before the
U.S. House of Representatives
Committee on Financial Services

On

The Participation of Financial Holding Companies And National Bank Subsidiaries In Real Estate Brokerage Activities

June 15, 2005

Good morning, Mr. Chairman and members of the Committee. My name is George T. Eastment, III and I am President of Long and Foster Financial Services, a full service real estate home ownership company headquartered in Fairfax, Virginia.

Long and Foster Financial Services has 230 residential real estate brokerage offices that engage in real estate sales and leasing in Virginia, Washington D.C., Maryland, West Virginia, Delaware, Pennsylvania, North Carolina, and New Jersey. Our firm has 17,500 sales associates and employees.

Long and Foster 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 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 14 joint ventures and wholly owned companies that conducted over 20,000 settlements last year.

Today I am representing the Real Estate Services Providers Council, Inc. (RESPRO®) as its past Chairman, current Treasurer, and as a member of its Executive Committee and Board of Directors.

RESPRO® is a national non-profit trade association of approximately 260 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 (see attached membership list).

A substantial number 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 "diversified" real estate brokerage firms, which means we also offer mortgage, title, and/or other settlement services to our customers through either

wholly-owned companies or through joint ventures with mortgage lenders, title companies, or other settlement service firms that may be RESPRO® members as well.

RESPRO®'s real estate broker members are not alone in providing diversified services for home buyers. According to a 2004 study conducted by the independent consulting firm of Weston Edwards and Associates, 88% of the 350 largest residential real estate brokerage firms throughout the country offered mortgages in 2004, and that 66% offered title, closing or escrow services.[1]

I. Position of RESPRO® on Competition in Providing One-Stop Shopping

Since its creation in 1992, RESPRO® has advocated a federal and state regulatory environment that would allow any provider to offer the services it believes would best meet the needs of its customers, regardless of its industry or affiliation.[2]

Our reason for advocating such a regulatory environment is simple. We strongly believe that one stop shopping offers potential consumer benefits such as convenience and lower costs. 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 that assessed the impact of realty-based one stop shopping in the marketplace. All have conclusively shown that realty-based one-stop shopping programs offer many potential benefits to the home buyer.

"Significant Changes Found and Expected in the Way Homes Are Bought and Sold", By Weston Edwards & Associates, 2004.

2 Based on this mission, RESPRO® has over the years (1) actively supported a 1992 Real Estate Settlement Procedures Act (RESPA) regulation that established consistent guidelines under which real estate brokerage firms and other providers could offer mortgage, title, and other settlement services under RESPA; (2) recommended that the Department of Housing and Urban Development (HUD) not proceed in 2004 with a flawed final RESPA rule to provide a RESPA exemption for 'packaging' unless the rule was modified to allow all providers to offer 'packaging'; and (3) actively opposed state laws that prohibit or restrict the ability of real estate brokers, home builders, or mortgage lenders to enter into affiliations for the purpose of offering one-stop shopping.

The most recent survey of consumer attitudes towards realty-based one stop shopping was performed in 2002. 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.

- 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.[3]

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.[4] 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.[5]

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. RESPRO®'s Position on Bank-Real Estate Affiliations

When the Federal Reserve Board (Fed) and the Department of Treasury proposed to allow financial holding companies and national bank subsidiaries to enter the real estate brokerage and related industries in 2001, RESPRO® carefully deliberated the issue before taking a position.

Frankly, the majority of RESPRO®'s real estate broker members did not believe that a rule allowing the entry of financial holding companies and national bank subsidiaries into real estate brokerage and related activities would fundamentally change the nature of the real estate brokerage marketplace.

---

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."

This belief was based upon our experience. 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, and 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 other financial conglomerates 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 and savings 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, and for many years savings institutions were able to own real estate brokerage firms through the unitary thrift holding company exemption to the Home Owners Loan Act.

For example, 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 Florida over the years. But over time, most of these financial institutions sold their real estate brokerage businesses and retreated from the marketplace.

But the main reason RESPRO® decided to enter this debate was because our primary mission is to defend the ability of all providers to offer consumers the benefits of realty-based one-stop shopping. Yet, after the debate over banks in real estate began we heard questions being asked by public policymakers as to whether the real estate brokerage community was being "hypocritical" by wanting to be in the financial services business without letting financial institutions compete with us in the real estate brokerage business.

Since this misrepresented the views of RESPRO® and the majority of our real estate broker members, we decided to speak up independently in favor of what we have always believed in -- open competition in providing one-stop shopping for home buyers.

IV. RESPRO® Believes that the Parties to this Debate Should Enter Into Discussions to Resolve their Differences

As you well know, the debate over banks in real estate has been occupying Congress, the banking industry, and the real estate industry for over four years, with no final resolution. RESPRO® believes that it would be useful for the parties to this debate

to enter into discussions to resolve their differences, and we would willingly participate in any such discussions in good faith.

We expect that the discussions will revolve at least in part around ways to protect the safety and soundness of the federally-insured deposits of banks affiliated with real estate firms, and to ensure that real estate brokers and agents that are affiliated with financial holding companies and national banks are subject to the same state licensing requirements that apply to all real estate brokers and agents. RESPRO® would certainly support provisions in any law or regulation that would accomplish these goals.

In addition, as a representive of diversified real estate brokerage firms, RESPRO® would want to ensure that any law or regulation governing the entry of financial holding companies into real estate brokerage and related businesses assures the following.

A. That Bank-Owned and Non-Bank Real Estate Brokerage Firms Be Equally Subject to RESPA and its Affiliated Business Requirements

At the federal level, all settlement service providers, including diversified 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".

Diversified 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.[6]

Financial holding companies and national bank subsidiaries that enter the real estate brokerage business should be subject to these RESPA requirements.

B. State Laws Affecting Diversified Real Estate Brokerage Firms

Diversified residential real estate brokerage firms also are subject to a myriad of state laws and regulations that prohibit or restrict their operations.

In 2004, approximately two-thirds of 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.[7] 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

---

6 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.

8 "State Survey of Affiliated Business Laws", by the Real Estate Services Providers Council, Inc. (RESPRO®), 2004.

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 preempted Kansas financial institutions *only* from a Kansas state law at that time that prohibited a title agency from receiving in excess of 20% of its operating revenue from an affiliate.

If financial institutions continue to exempt themselves from these state restrictions, financial institutions could own a title company in states with these "percentage cap" laws but non-financial institutions, including 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 financial holding companies and national bank subsidiaries are allowed to own real estate firms, we believe that state laws should apply equally to all real estate brokerage firms, regardless of their affiliation.

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

GEORGE T. EASTMENT, III
LONG & FOSTER FINANCIAL SERVICES

President of Long & Foster Financial Services, a privately owned holding company with annual sales volume of over $56 billion in 2004. Long & Foster currently has 230 branch offices with 17,500 sales associates and employees in the Mid-Atlantic Region, including Virginia, Maryland, Pennsylvania, West Virginia, Delaware, North Carolina, New Jersey and the District of Columbia.

Serves as Secretary, Assistant Treasurer, and on the Board of Directors of all subsidiaries which include Long & Foster Real Estate, Inc., Prosperity Mortgage Company, Long & Foster Insurance Agency, Long & Foster Institute of Real Estate, Metro Referral Associates, Inc., Mid-States Title Insurance Agency, Inc., Long & Foster Land Holdings, Inc., and Long & Foster Franchise Company, Inc. Joined the company in 1972 as Controller, then promoted to Financial Vice President, Senior Vice President and, in May 1993, Executive Vice President.

University of Virginia Graduate School of Business – MBA (1972)
Manhattan College – BBA (1967)

Certified Public Accountant
Certified Financial Planner
Virginia Real Estate License

Captain, Inactive Reserve, United State Marine Corps (1967-1970).
Served as rifle platoon commander, communications platoon commander, infantry regiment communications officer, and communications watch officer, including a 13-month combat tour in Vietnam. Top Secret clearance.

TESTIMONY OF
PHIL GRAMM

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES
AT THE HEARING TITLED

"PROTECTING CONSUMERS AND PROMOTING COMPETITION IN REAL ESTATE SERVICES"

JUNE 15, 2005

Chairman Oxley, Ranking Member Frank, and Members of the Committee, thank you very much for the invitation to testify before your Committee today.

Before continuing, Mr. Chairman, let me commend you and your colleagues for the leadership you exhibit on various issues within this Committee's jurisdiction. The past several years have been marked by events affecting the delivery of financial services to consumer investors, financial accounting and transparency, and the review of numerous issues arising from the implementation of the Sarbanes-Oxley Act. Under your leadership, this Committee has exercised the highest standard of congressional oversight. So, while the distance between our offices is now more than just across the Capitol Plaza, I remain keenly interested in your work and commend you for your diligence in protecting the public interest.

The hearing you hold today is yet another example of this Committee's untiring efforts to address significant public policy issues.

The subject of today's hearing focuses on some of the most important provisions of the Gramm-Leach-Bliley Act (the Act), clearly provisions serving as one of the pillars of financial reform, as my esteemed former colleagues Chairmen Leach and Bliley will, I think, agree. Without the expansion of permissible financial activities, the removal of barriers to affiliation under the Act is rendered meaningless. These provisions were topics of thorough debate and consideration in numerous meetings at which Chairmen Leach, Bliley and I were participants in 1999. I also must

acknowledge the contributions of then Ranking Member LaFalce.

I am confident that Jim and Tom will agree with me that the final agreement of the conferees reached in this very room in late October 1999 evokes poignant, if not fond, memories. The agreement was announced by Chairman Leach and agreed to by all of the conferees, followed by a swift gavel signifying the conclusion of our proceedings at about 3:00 a.m. Upon reflection, I am inclined to believe that Chairman Leach quickly gaveled the conclusion of that meeting not because of the lateness of the hour, but before anyone could have a change of heart.

As a preliminary matter, let me be clear that my testimony solely reflects my personal views, and not necessarily those of my current employer or fellow employees.

General Background.

Under the Act, the Federal Reserve Board was granted umbrella regulatory powers over financial holding companies (FHC's). The expanded powers under the Act may be engaged in by qualifying FHC's and by financial subsidiaries of national banks. The Act reflects the wisdom of the Congress that none of us serving at the time could see into the future or judge what the full scope of financial activities would, or should, encompass. Rather, the Act amended the Bank Holding Company Act and the Revised Statutes to create a process by which the list of financial activities could and would be expanded.

I recall that in testimony before the Senate Banking Committee and before the then House Banking Committee, Federal Reserve Board Chairman Alan Greenspan observed that the landscape of financial activities would change dramatically over the ensuing five to 10 years. We are now six years into that forecast. I believe that Chairman Greenspan's observation is accurate; and I remain convinced that the Bank Holding Company Act and the Revised Statutes, both as amended by the Gramm-Leach-Bliley Act, create the proper framework for the determination of financial activities.

Process for Determining that an Activity is Financial in Nature or Incidental to Such an Activity.

Specifically, The Act created new Subsections (k) through (o) of Section 4 of the Bank Holding Company Act, addressing generally the following: financial activities; coordination between the Federal Reserve Board and the Secretary of the Treasury; conditions for engaging in financial activities; conditions applicable for failure to meet certain requirements; and the retention of limited nonfinancial activities and affiliations. While new Section 4(k)(4) enumerates activities determined to be financial in nature, Section 4(k)(2) establishes a process of coordination and cooperation between the Federal Reserve Board and the Secretary of the Treasury, allowing them to determine jointly that an activity is financial in nature or incidental to a financial activity and, therefore, permissible for FHC's. Neither agency may determine that an activity is financial in nature or incidental to a financial activity if the other agency indicates in writing that an activity is not financial in nature, not incidental to a financial activity, or not otherwise permissible.

Section 121 of the Act (creating a new Section 5136A of the Revised Statutes) creates a parallel provision for the Secretary of the Treasury to determine new financial activities or activities incidental to such activities for financial subsidiaries of national banks.

Factors for Consideration in Determining that Certain Activities are Financial in Nature or Incidental to Such Activities.

Section 4(k)(3) requires the Federal Reserve Board to take into consideration certain factors in determining whether an activity is financial in nature or incidental to a financial activity. Generally, the four factors specified in the law require the Federal Reserve Board to take into account

- The purposes of the Bank Holding Company Act and the Act;
- Changes or reasonably expected changes in the marketplace in which FHC's compete;
- Changes or reasonably expected changes in the technology for delivering financial services; and
- Whether the activity is necessary or appropriate to allow a FHC and its affiliates to compete effectively with any company seeking to provide financial services in the US; efficiently deliver information and services that are financial in nature through the use of technological means; and offer customers available or emerging technological means for using financial services or for the document imaging of data.

The Act, at Section 121 (creating a new Section 5136A of the Revised Statutes), addresses the establishment of financial subsidiaries of national banks and establishes the same factors for consideration by the Secretary of the Treasury for determining whether certain activities are financial in nature or incidental to such activities and, therefore, permissible for the financial subsidiaries of national banks.

Requests by Third Parties for Determinations that Certain Activities are Financial in Nature or Incidental to Such Activities.

Pursuant to Section 4(k)(2) and Section 5136A, third parties are permitted to request that the Federal Reserve Board or the Secretary of the Treasury determine that any activity is financial in nature or incidental to a financial activity. Acting under these provisions, in December 2000 the agencies received a request for a determination that real estate brokerage and real estate management are financial activities.[1] The agencies came to agreement that such activities are financial in nature and on January 3, 2001, issued a joint proposed rule seeking public comment.

Under the joint proposed rule, "real estate brokerage" is defined to mean acting as agent in a real estate transaction; listing and advertising real estate; providing advice in connection with a real estate purchase, sale, exchange, lease or rental; bringing parties together and negotiating on behalf of such parties. FHC's and financial subsidiaries would not be permitted to invest in or develop real estate as principal, or take any financial interest in real estate that they broker.

Under the joint proposed rule, "real estate management" generally is defined to mean procuring tenants; negotiating leases; maintaining security deposits; billing and collecting rent payments; and inspecting and maintaining real estate. FHC's and financial subsidiaries would not be permitted to acquire a financial interest in real estate managed, or directly repair or maintain real estate managed.

[1] Request made by the American Bankers Association and the Fremont National Bank and Trust Company of Fremont, Nebraska.

Nothing in the Act expressly or impliedly deems real estate brokerage or management activities to be impermissible for determination as financial activities. The only real estate related activities expressly mentioned are those at Section 121 of the Act (creating a new Section 5136A of the Revised Statutes). In that Section, financial subsidiaries of national banks are *prohibited* from engaging in *"real estate development or real estate investment activities, unless otherwise expressly authorized by law."* Section 121 was the product of careful negotiation over a substantial period prior to its acceptance at a meeting of the conferees held in the Capitol in the Fall of 1999.

Thus, it appears that the agencies properly exercised their authority under the Bank Holding Company Act and the Revised Statutes to determine that real estate brokerage and real estate management are financial activities, and to solicit public comments on the contours of their proposed regulation. It is my understanding that that process has not been completed since it was initiated in 2001.

Preserving the Framework for Determinations of Permissible Financial Activities and Activities that are Incidental to Such Activities.

It took the Congress approximately 9 months to complete its work on the Gramm-Leach-Bliley Act working with the Federal financial regulators, representatives of public interest groups, industry, and certain State regulatory authorities. This, however, followed some six decades of debate on the need for reforms to update our banking laws. The method established under the Act for determining financial activities and activities incidental to financial activities was one arrived at after lengthy negotiations. In order for our financial industry to remain competitive domestically and globally, our statutory and regulatory regimes must be able to respond to changing market dynamics, and to do so quickly and effectively. When we decided in 1999 upon the method for determining new financial activities going forward, we agreed to do so on the basis that it was imprudent to create a static, fixed definition in the law for permissible financial activities. Instead, we provided flexibility for the Federal Reserve Board and the Treasury to initiate their own proposals or to consider proposals from third parties for new financial activities. It is my hope that we can rely upon this framework and that it can be a sound and fair basis upon which our financial institutions evolve. The rulemaking process contains procedural safeguards, transparency, and the opportunity

for public comment. Hopefully, Section 4(k) of the Bank Holding Company Act and Section 5136A of the Revised Statutes will not become empty provisions of the law, but will be utilized to serve the interests of a competitive industry, the consumers of financial products and services, and the safety and soundness considerations of our financial regulators.

Thank you, again, Mr. Chairman, Ranking Member Frank, and Members of this Committee for the courtesy of your invitation and for your interest in my views.

NATIONAL ASSOCIATION OF REALTORS®

The Voice for Real Estate®

500 New Jersey Avenue, NW
Washington, DC 20001-2020
202.383.1194 fax 202.383.7580
www.REALTOR.org/governmentaffairs

Al Mansell, CRB
President

Terrence M. McDermott
EVP/CEO

GOVERNMENT AFFAIRS
Jerry Giovaniello, Senior Vice President
Walter J. Witek, Jr., Vice President

Hearing Before The House Financial Services Committee

Entitled

"Protecting Consumers and Promoting Competition In Real Estate Services"

Testimony of Al Mansell
President
National Association of REALTORS®

June 15, 2005

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

Chairman Oxley, Representative Frank, and Members of the Committee, thank you for inviting me here today. My name is Al Mansell, and I am the former chief executive officer of Coldwell Banker Residential Brokerage (formerly Mansell & Associates) in Salt Lake City, Utah – a full-service realty firm specializing in residential sales and brokerage.

As the 2005 President of the National Association of REALTORS® (NAR), I am here to testify on behalf of our more than 1.2 million members, who represent all aspects of the residential and commercial real estate industry. NAR's membership includes more than 300,000 REALTOR® companies. I appreciate the opportunity to share our views on the prospect of allowing the big banking conglomerates to operate real estate brokerage, leasing and property management businesses.

As the testimony you have heard today shows, opinions about the intent of Gramm-Leach-Bliley may differ. NAR is pleased that 234 Members of the House of Representatives and 25 Senators have shown they share our opinion on this issue by cosponsoring the "Community Choice in Real Estate Act."

Mr. Chairman, you have introduced legislation that takes an opposing view of the intent of Gramm-Leach-Bliley. I won't spend my limited time here debating the differences. Instead, I would like to focus on what likely would happen to consumers, small businesses, and the real estate industry if the huge banking conglomerates are permitted to enter the real estate business.

First, it is important to emphasize that real estate and homeownership have been the bulwark of our economy for more than ten years now. President Bush has recognized this fact in many speeches throughout the country. Consumers have benefited from the record housing market. Local economies have benefited. And the businesses that serve the market have benefited. As part of this robust industry, those testifying here today also have benefited, including banks. Bank profits are at record levels, and their stocks are rising.

America's housing system is working better than ever. We have two very healthy industries – banking and real estate – that continue to drive both our national and local economies. To make any change to this vital market demands very careful consideration. The reasons for change must be compelling. And the change itself must not threaten harm to the system.

NAR's members have considered the impact of allowing large banks into the real estate business. We believe there is no compelling market need for such a change. Moreover, we believe such a change would have profound negative consequences for consumers, businesses, the housing market, and the economy.

In short, proposals now being considered – including legislation before this Committee – would shift the competitive landscape in the real estate market by allowing big banks to compete on an uneven playing field. While this change most certainly would benefit big banks, it would harm the real estate industry, small businesses, consumers and our nation.

Why is this change being considered?

For several years now, banks have been seeking both a regulatory and legislative edge in the real estate market. Bankers contend that small community banks seek this change so that they can better compete with multi-service real estate firms. However, as the American Bankers Association states in its testimony, over half of the states already allow their state chartered banks to own real estate companies. Yet, while small community banks have the ability to obtain a state charter, very few of them have taken advantage of that authority to operate a real estate business.

NAR believes this legislation is part of a concerted plan by large banking conglomerates to monopolize the entire real estate transaction – from the sale of the property to the sale of the mortgage on the secondary market. Banks previously have sought to amend the Real Estate Settlement Procedures Act in a way that grants them unfair advantages over other service providers. More recently, they have attempted to influence the reform of regulation of Fannie Mae and Freddie Mac to limit the ability of those companies to compete with large banks in the secondary market. And they have pressed the Fed/Treasury to finalize its proposed real estate rule that also would open the door to banks in the real estate business. Add to that list the preemption of state consumer protection laws that federally chartered banks enjoy, and it is not difficult to imagine how anti-competitive real estate would be if the banks have their way.

It is the largest mega banks that will benefit most from an open entrée into the real estate business. It will, in effect, nationalize the real estate business. By owning a real estate operation, these large banks can use their federally granted charter advantages and vast insured deposit-based capital to dominate the real estate industry. Such commercial activity would also enable large banks to own a consumer's financial and personal information.

Forcing independent real estate brokers to compete against the federally chartered mega banks would be like asking a cruise ship to compete against the United States Navy in warfare. Not only are their core competencies completely different, but banks also enjoy tremendous government-sponsored advantages that real estate brokers – even those with mortgage companies – do not. That is why federal law prohibits banks from entering commercial businesses like real estate.

I ask you: Is it good public policy for Congress and/or regulators to choose winners and losers among these equally strong industries?

NAR asks Committee Members to look closely at the existing relationships between banks and real estate brokers before you proceed.

Contrary to what the banks would have you believe, today there is a very efficient, cost-effective process for consumers to buy and/or sell their homes and obtain financing. This process ensures an arms-length interaction between banks and real estate brokers. It does not present the conflicts of interest inherent should the financial company, with its federal banking advantage, own the real estate firm.

There are numerous examples of this type of partnership.

Since 1993, Wells Fargo Home Mortgage has affiliated with Long and Foster Realtors to operate Prosperity Mortgage Company, a joint venture. Quotes from their website are telling:

> *"Did you know Prosperity Mortgage® is chosen by more Long & Foster® real estate customers than any other lender?...They choose us because working with Long & Foster's own mortgage company gives our customers the best of both worlds: Long & Foster® and Prosperity Mortgage® know each other like the related companies we are. Because we work side-by-side with Long & Foster® every day, we can make your home financing process go more smoothly and ensure a timely closing." (see exhibit 1 from Long and Foster website)*

Bank of America (BofA) is the preferred lender for the entire RE/MAX franchise. BofA also is the preferred lender for the entire Help-U-Sell real estate franchise system. Help-U-Sell is a discount real estate broker that "gives consumers the option of participating in the sale of their home." (http://www.helpusell.com)

Such relationships between banks and real estate brokers are widespread. (see exhibit 2) In our members' view, they are an appropriate way for both parties to prosper in the real estate transaction, while avoiding all of the conflicts of interest that arise from mixing banking and commerce.

I urge this Committee to think carefully before attempting to "fix" a system that isn't broken. I also ask that you consider what Americans have to look forward to if you proceed with proposed measures that would allow big banks to own and operate commercial real estate businesses.

Consider these recent headlines:

"Consumer advocates rail against hidden fees; They say banks have grown fat by charging a few dollars at a time" Houston Chronicle, 9/6/04

"Outsized, out of control?; Mergers of giant banks and their various businesses to create trillion-dollar behemoths threaten to leave regulators behind" Chicago Tribune, 1/18/04

"Bank loses tapes of records of 1.2 million" New York Times, 2/26/05

"Two banks pay $515 million to settle allegations of improper mutual fund trading" AP, 3/6/04

"Who pays for big banks' risks?....Taxpayers will" Minneapolis Star Tribune, 4/28/04

Last week, Chairman Greenspan expressed concern that the growing use of riskier new mortgages is helping push up home prices to "unsustainable levels" in some local markets. He stated that "The dramatic increase in the prevalence of interest-only loans, as well as the introduction of other relatively exotic forms of adjustable-rate mortgages, are developments of particular concern."

NAR has taken a strong stance against the practice of trapping consumers into "toxic" loans that benefit the lender and not the consumer. We have launched a new consumer education campaign through our membership to help consumers, particularly those with credit problems, avoid the pitfalls of predatory-lending practices. Our members are working with existing programs and community groups to help consumers obtain information about financial literacy and how to avoid predatory lending.

Because they are independent contractors, whose service to today's clients determines tomorrow's prospects, REALTORS® have an incentive to recommend the best mortgage lenders. In fact, REALTORS® acting as independent agents more often refer their clients to non-affiliated lending sources than to their brokers' lending arms.

One must ask: If a bank-employed real estate agent could receive a bonus based on the size or type of mortgage or other financial product he cross-markets to his homebuyer or seller, is he really going to look out for the consumer's best interest?

NAR believes all the firewalls in the world won't cool off the zeal of the money-center lenders trying to sell their most profitable loans to people who should not be taking such risks. In addition to harming consumers, this zeal could pose a real risk to the safety and soundness of these banks.

Predatory lending is just one example of the conflicts of interest that could arise when a holding company controls both banks and non-banking organizations. Consider some additional scenarios:

- A brokerage firm seeking credit from a bank with an affiliated brokerage firm will essentially be seeking financing from its competitor. In order to help its non-banking affiliates, a holding company bank might deny justified credit to competitors of such affiliates. Competition would be choked.

- Even if the bank grants credit to a competitor, its non-banking organization may occupy a preferred position over that of its competitors in obtaining bank credit. Banks might even continue to make loans to failing affiliated firms, ultimately threatening the safety and soundness of the banking system.

- Proprietary information from a real estate brokerage or property management firm applying for a bank loan also could end up in the hands of the bank's competing affiliates. Knowledge of information, such as commission income, business expenses, and economic assumptions about commercial properties – lease terms and termination rights – would give a bank's affiliated entities a highly competitive advantage. For example, the financial institution's affiliated management company could now market their services to a competitor's tenants, having knowledge of their lease expiration dates and the financial terms of the lease arrangements.

- When a holding company extends credit to consumers, it might exert pressure on borrowers to do business with the lending bank's affiliated corporations, rather than with their competitors. The primary issue is not whether overt pressure will be consciously or deliberately exerted on bank customers to use a bank-affiliated real estate broker. Our concern is that potential homebuyers and home-sellers would perceive that credit for any prospective purchaser would be more easily obtainable, if a sale of real property were arranged through a bank-affiliated broker. A prospective home-seller naturally would want to increase his or her likelihood of having prospective purchasers qualify for financing.

- And we need only to look at the headlines to worry about how confidential personal information is treated by the country's largest banks. Citigroup recently lost 3.9 million customers' confidential records. Does Congress want to increase the amount of personal data entrusted to these businesses?

These are just some examples of how allowing banks to offer real estate services could result in fewer choices for consumers, poorer service, and ultimately higher costs.

If you doubt for a moment that banks will use their size and advantages to put a stranglehold on their customers, you need only look to the Automated Teller Machine for a reminder. Heralded as a great innovation to save consumers time and money, ATMs have done more for banks than they have for anyone else. They certainly have not saved consumers money, yet the banks are earning high fees. In fact, ATM fees to consumers have steadily risen ever since their inception. Fees for checking accounts and other bank services continue to rise as well.

There also is little evidence to show that bank-owned insurance companies or securities brokers have resulted in savings to consumers. The Gramm-Leach-Bliley Act commissioned the Department of Treasury to study the effects of mergers among banks, insurance companies, and securities firms on consumers. In January 2001 Treasury concluded that it was too early to assess the impact on cross-industry mergers. They still have not completed that report.

I ask this Committee: Why should banks be permitted to participate in a whole new industry when their regulators have not been able to discern the effects of previous new powers?

Our conclusion here is obvious.

To consider adding to banks' purview, Gramm-Leach-Bliley requires a change in market, competition or technology conditions that harm banks' competitiveness. There is just no evidence to warrant such a public policy shift at this time.

Moreover, the proposal being considered could disrupt the real estate market, without any real benefits to consumers.

Real estate remains a small, community-based business. Even the nation's largest franchises are small businesses that are independently owned and operated. Full-service realty firms are not bankers. We don't take deposits, and we don't offer checking accounts. We don't have the federal charter advantages of deposit insurance or access to the federal funds discount window. Full-service realty firms use private capital to provide their services. The broker and her investors are at risk if their business plan fails. There is no federal backstop.

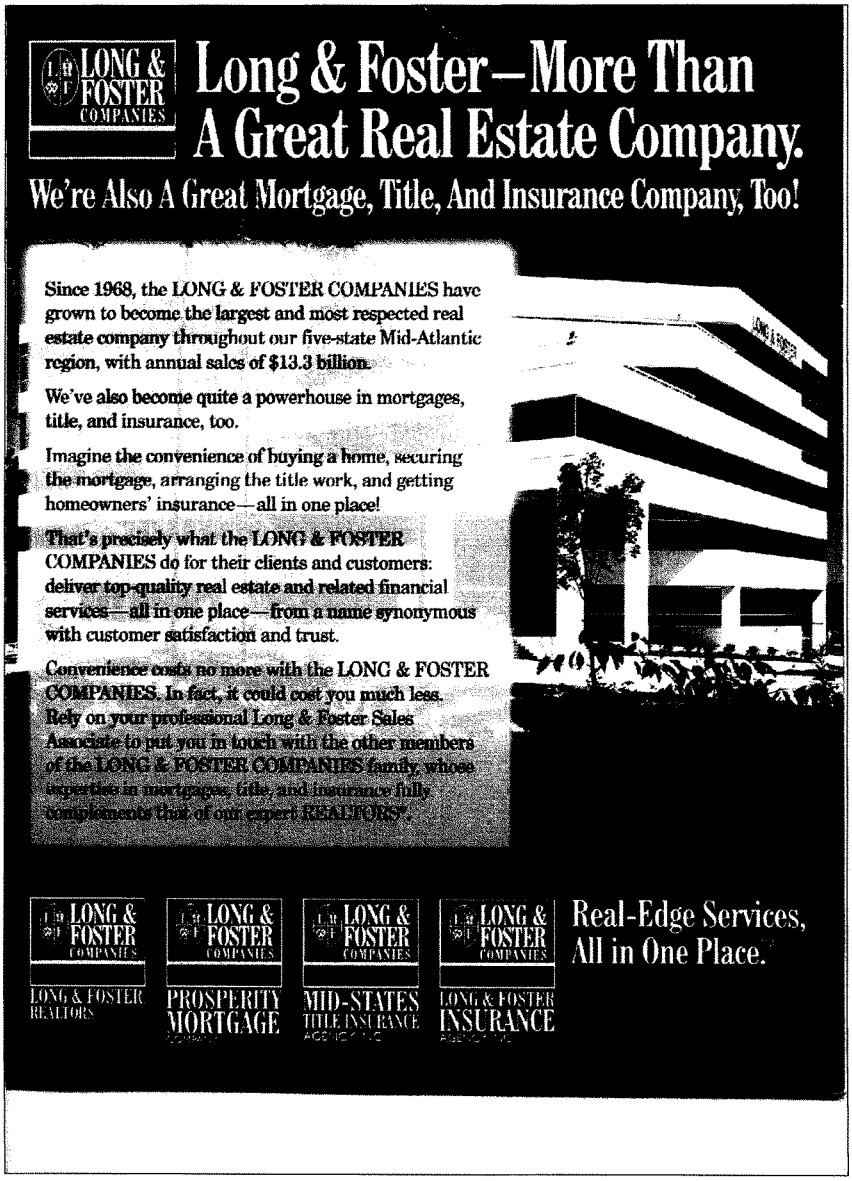
Meanwhile, the huge banking conglomerates keep getting bigger. The top four banks account for over 25 percent of deposits nationally. Consolidation has resulted in the loss of jobs and provided economies of scale to the banks. This allows them to become more profitable, while there is very little evidence that those savings have benefited consumers, in the form of lower fees or higher interest on deposits.

Mr. Chairman and Members of the Committee, we are on the edge of a very slippery slope. Once the banking and commerce wall has been broken, the next step may be automobile, boat, jewelry or appliance sales. Congress should carefully deliberate the need for and consequences of allowing this huge shift in public policy to occur.

In the final analysis, it just does not make sense for Congress or the regulators to upend a system that has worked efficiently to produce our nation's highest rate of homeownership in history. The facts do not justify the risk.

Thank you.

(Exhibit 1)


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®.
LONG & FOSTER COMPANIES
LONG & FOSTER REALTORS
LONG & FOSTER COMPANIES
PROSPERITY MORTGAGE
LONG & FOSTER COMPANIES
MID-STATES TITLE INSURANCE
LONG & FOSTER COMPANIES
LONG & FOSTER INSURANCE
Real-Edge Services, All in One Place.

(Exhibit 1)

My Long & Foster | Homes For Sale | Real Estate Offices | Find a Realtor | Contact Us | Home

LONG & FOSTER REAL ESTATE, INC.

www.longandfoster.com

- Homes
- Mortgages
- Real Estate Services
- Real Estate Careers
- Mid-Atlantic Region
- About Long & Foster

Finance a Home

Home Page | Prosperity Mortgage

LONG & FOSTER COMPANIES

PROSPERITY MORTGAGE COMPANY

Prosperity Mortgage®

Did you know Prosperity Mortgage® is chosen by more Long & Foster® real estate customers than any other lender? They choose us because working with Long & Foster's own mortgage company gives our customers the best of both worlds:

Convenience. Long & Foster® and Prosperity Mortgage® know each other like the related companies we are. Because we work side-by-side with Long & Foster® every day, we can make your home financing process go more smoothly and ensure a timely closing.

Choice. Prosperity Mortgage® joined Wells Fargo Home Mortgage in 1993 to form Prosperity Mortgage® Company. As a result of this joint venture, you can count on excellent, personalized local service backed by the expertise of one of the nation's largest and most respected lenders. And we have an unequaled selection of mortgage products to choose from to meet your particular needs and financial situation.

EQUAL HOUSING LENDER

The results of our successful partnership are clear. We're one of the growing mortgage companies in our seven-state, Mid-Atlantic region. And for the past five years, The Washington Post has recognized Prosperity Mortgage® as one of the top five mortgage lenders in the D.C. metro area.

For more information about Prosperity Mortgage®, and our complete line of comprehensive mortgage services, please visit our web site at: www.ProsperityMortgage.com.

Ready to buy? A pre-approval from Prosperity Mortgage will put you one step ahead of other bidders in this hot market. Go to our online application now and get pre-approved!

(Exhibit 2)
Examples of Existing Affiliations Between Real Estate Brokers and Lenders

REAL Trends

May 2003

- Strategic Alliances

Help-U-Sell Real Estate has signed an Internet marketing agreement with Bank of America. Through this agreement, Bank of America will be the exclusive online mortgage provider for the Help-U-Sell corporate Web site and enable its national network of 300 plus broker to participate. The alliance will allow Help-U-Sell to provide its customers with a "one-stop shopping" Web site where they can access property listing information, compare Bank of America mortgage products and initiate the mortgage process.

REAL Trends

September 2003

- Strategic Alliances

RE/MAX has selected Bank of America, N.A. as its exclusive preferred mortgage lender and home equity provider for its customers. RE/MAX and Bank of America will work together with the more than 3,100 RE/MAX franchisees nationwide on opportunities to provide homebuyers with integrated home buying and home financing services through the formation of joint ventures, joint marketing agreements and desk rental arrangements. Ventures formed between the two companies and individual franchisees will result in the creation and operation of separate owned and operated home financing companies dedicated to serving RE/MAX customers.

REAL Trends

October 2003

- Strategic Alliances

TheHomeLoanGroup (THLG), the in-house mortgage subsidiary of Prudential California Realty, Prudential Nevada Realty and Prudential Texas Properties, has formed a strategic alliance with Chase Ventures Holding, Inc., a Chase affiliate, to form The Home Loan Group, L.P. The alliance creates one of the largest real estate and mortgage joint ventures of its kind and will provide customers across the Western United States with the benefits of full service professional real estate services, as well as the benefit of mortgage services, with a team to see the transaction through from origination to closing.

- **Wells Fargo** is the preferred lender for **Keeler Family REALTORS®, NH** — http://www.keelerfamily.com/mortgage_reps.htm

- **Wells Fargo** and **Harry Norman REALTORS®, GA** own a joint venture company, Academy Financial Services — http://www.academyfinancialservices.com/about.asp

- **Wells Fargo** is the lender for the **RE/MAX-Gallery REALTORS®, Gloucester, MA** — http://www.remax-gallery.com/PageLibrary/17317/custom/MarkGordon.php

- **Wells Fargo** and **Prudential California Realty** own a joint venture company, Guarantee Pacific Mortgage — http://www.prucalifornia.com/cstm/pr/detail.asp?DocumentID=65

- **Wells Fargo** is the preferred lender for **Carpenter REALTORS®, IN** — http://www.carpentergmac.com/

- **Bank of America** is one of the "Gold Partners" for the **Northern Virginia Association of REALTORS®** — http://www.nvar.com/

- **Bank of America and Wells Fargo** are among a list of **Bay East Association of REALTORS®,** Mortgage Loan Affiliates, in CA — http://www.baymls.com/bayeast/includes/ShowAffiliate.cfm?type=ML&catname=Mortgage%20Loans

- **Alain Pinel REALTORS®** owns Private Mortgage Advisors, an affiliate of **Wells Fargo —** http://www.apr.com/DesktopDefault.aspx?pageid=1091&pagealias=Financing

- **Bank of America, Sun Trust, Wells Fargo, Wachovia, First Citizens Bank**, among others complete the list of of **Charleston Trident Association of REALTORS®,** Affiliate Mortgage Lenders — http://www.charlestonREALTORS.com/af_lenders.html

- **GuarantyMortgage, Wells Fargo, Anchor Bank,** and others are preferred lenders for the First Weber REALTORS® in Wisconsin. —
http://www.firstweber.com/concierge/pref_msn.html#mort
http://www.firstweber.com/concierge/pref_ad/guaranty.html
http://www.firstweber.com/concierge/pref_ad/wellsfargo.html
http://www.firstweber.com/concierge/pref_ad/anchorbank.html

- **Bailey Properties (CA)** uses Bailey Mortgage LP an affiliate of **Chase** — http://www.baileymortgage.com/

- **Bank of America** is a lender for **Help-U-Sell, Scotts Valley California** — http://www.helpusell.com/scottsvalley/buyers/mortgage.aspx

- **HomeStreet Bank** in Seattle, recommends several real estate agents in Western Washington (from companies such as **Windermere Real Estate, Coldwell Banker, Remax Equity Group**)
http://www.homestreetbank.com/programs/partners/REALTORS®/washington/index.aspx

- **Bank of America** is the preferred lender for the entire **RE/MAX** franchise - http://www.remax.com/residential/mortgage_tools/index.htm

- **Bank of America** is the preferred lender for the entire **Help-U-Sell** franchise - http://www.helpusell.com/Mortgage/Default.aspx

- **Wells Fargo** and **Long & Foster** own a joint venture mortgage company, Prosperity Mortgage - http://mortgages.longand-foster.com/prosperity_mortgage.aspx

- **Countrywide** and **Prudential Residenz** (OH) own a joint venture mortgage company, Paramount Mortgage - http://www.keyes-gateway.com/finance/

- **Countrywide** and **RE/MAX Gold** (Sacramento) own a joint venture mortgage company, California Gold Financial - http://agentsonly.norcalgold.com/countrywide/cw.asp

- **Countrywide** and **Star Real Estate** (Orange County) own a joint venture mortgage company, Terra Mortgage (no website found).

- **Chase Home Finance**, **Prudential California**, **Prudential Texas**, and **Prudential Nevada** own a joint venture mortgage company, The Home Loan Group - http://www.thehomeloangroup.com

- **Countrywide** and **1st USA Realty** (AZ) own a joint venture mortgage company, Ameriwest Home Loans - http://www.ameriwest.com

- **Countrywide** and **Prudential Verani** (NH/MA) own a joint venture mortgage company, CMV Home Loans - http://www.cmvhomeloans.com/default.aspx

- **Countrywide** and **Starck & Co.** (Chicago suburbs) own a joint venture mortgage company, First Freedom Mortgage - http://www.homesbystarck.com/

- **Countrywide** and **previewproperties.com** (Detroit area) own a joint venture mortgage company, propertymortgage.com - http://propertymortgage.com/

- **Wells Fargo** provides mortgage services for **RE/MAX Experience** (Temecula, CA) - http://www.remaxexperience.net/default.htm (click on "Services")

- **National City** provides mortgage services for **Prudential Tropical** (South FL) - http://www.capstonemortgagefunding.com/bwsb/aba/branch_home.aspx?BranchID=906

- **Wells Fargo** provides mortgage services for **RE/MAX Real Estate Groups** (Indianapolis) - http://www.realestateindy.com/

- **Wells Fargo** provides mortgage services for **RE/MAX Suburban** (Chicago area) - http://www.yourchicagohomes.com/

Wells Fargo Home Mortgage, Prudential California Realty Form Joint Venture

For Immediate Release - November 14, 2003

Contact: Scott N. Aberle
Director, Marketing and Technology
Ph: (209) 526-1007 x164
Fax: (209) 526-0967
E-mail: saberle@prucalifornia.com

WELLS FARGO HOME MORTGAGE, PRUDENTIAL CALIFORNIA REALTY FORM JOINT VENTURE

(MODESTO, California) Wells Fargo Home Mortgage, Inc., a subsidiary of Wells Fargo & Company (NYSE: WFC), and Sylvan Financial Services, Inc., an affiliate of Prudential California Realty, have agreed to the terms of a joint venture to originate, process and fund mortgage loans for customers of Prudential California Realty.

The joint venture, Guarantee Pacific Mortgage, LLC is co-owned by WFHMI and Prudential California Realty. Terms of the agreement were not disclosed.

The joint venture will offer customers of Prudential California Realty a wide range of home financing products and services through Wells Fargo Home Mortgage, the nation's leading provider of residential financing.

"I am very pleased to announce the joint venture with Wells Fargo Home Mortgage," said Craig C. Lewis, president and CEO of Prudential California Realty. "The joint venture will enhance the one-stop-shopping concept that we introduced to our marketplace several years ago.

"Wells Fargo Home Mortgage is the premiere mortgage lender in the United States, and generates one of every seven home loans in the Central Valley. The high standard of service at Prudential California Reality coupled with the innovation of the Wells Fargo Home Mortgage organization is a win-win for our clients as they navigate through the homebuying process."

About Prudential California Realty
Ronald V. "Bud" Stone founded Prudential California Realty as Stone Real Estate in 1965. In 1969, Bud joined forces with his brother Thomas R. Stone to create Stone Bros. Real Estate, which affiliated with the Prudential Real Estate Affiliates, Inc. in 1989 to create Prudential Stone Real Estate. In 1994, under the direction of President/CEO and Managing Partner Craig C. Lewis, the company expanded its statewide affiliation to become Prudential California Realty, an independently owned and operated member of the Prudential Real Estate Affiliates, Inc.

About Wells Fargo Home Mortgage
Wells Fargo Home Mortgage, Inc., headquartered in Des Moines, Iowa is a leading originator and servicer of residential mortgages. A subsidiary of Wells Fargo & Company (NYSE: WFC), Wells Fargo Home Mortgage serves all 50 states through the leading mortgage lending network in the country, with a presence in more than 1,800 mortgage and Wells Fargo bank stores and on the Internet. Combined, its

retail and wholesale lending operations provided funding for approximately one of every eight homes financed in the United States in 2002.*

*Based on statistics compiled by *Inside Mortgage Finance.*

###

Founded in 1965 as Stone Real Estate and transitioning to the Prudential name in 1989, Prudential California Realty (PCR) provides comprehensive real estate service when buying, selling and owning a home. The PCR family of companies includes Prudential Relocation (an independent organization that is part of Prudential Real Estate and Relocation Services), Guarantee Pacific Mortgage, LLC (an affiliate of Wells Fargo Home Mortgage, Inc.), Wolverine Property Management, Sylvan Transaction Services and Prudential Commercial Real Estate (an independently owned and operated member of
Prudential Commercial Services). Prudential California Realty is an independently owned and operated member of the Prudential Real Estate Affiliates, Inc. To learn more, visit http://www.PruCalifornia.com/.

Return to Press Room Table of Contents

WHY CHOOSE AN AVERAGE REAL ESTATE COMPANY WHEN YOU CAN CHOOSE PRUDENTIAL CALIFORNIA REALTY?
Central Valley Real Estate | Merced Real Estate | Turlock Real Estate | Modesto Real Estate | Stockton Real Estate
© 2000 - 2003. An independently owned and operated member of The Prudential Real Estate Affiliates, Inc. Prudential is a service mark of The Prudential Insurance Company of America. Equal Housing Opportunity. This Website is not intended to be a solicitation for the purchase, sale or lease of real property outside the State of California.
E-mail: info@PruCalifornia.com Agent Intranet Login: CLICK HERE Members of the Press: CLICK HERE

Instant Search Enter MLS# or PIN GO!

CONTACT US | MY FIRST WEBER

First Weber

About First Weber | Property Search | Sell A Property | Agents & Offices | Open Houses | Our Services

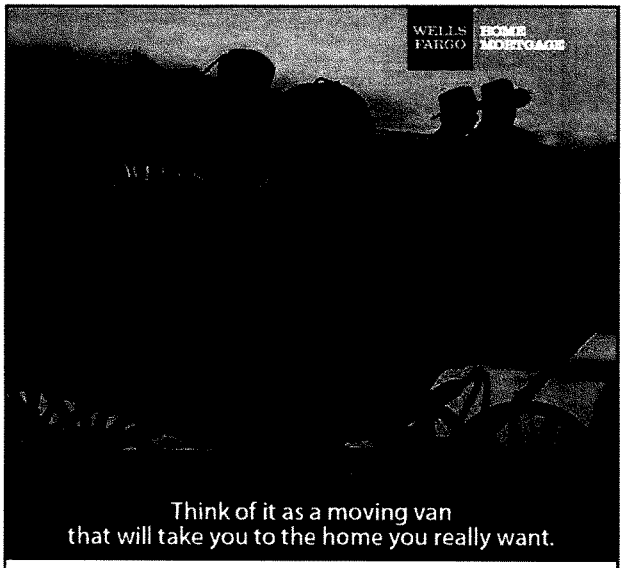
CONCIERGE DESK

"WELCOME LET US OPEN DOORS TO EXCELLENCE FOR YOU"

Preferred Alliance®

RECOMMENDED VENDOR

*The following firm has demonstrated a strong market presence and has consistently provided superior service to clients and customers of First Weber!



Think of it as a moving van
that will take you to the home you really want.

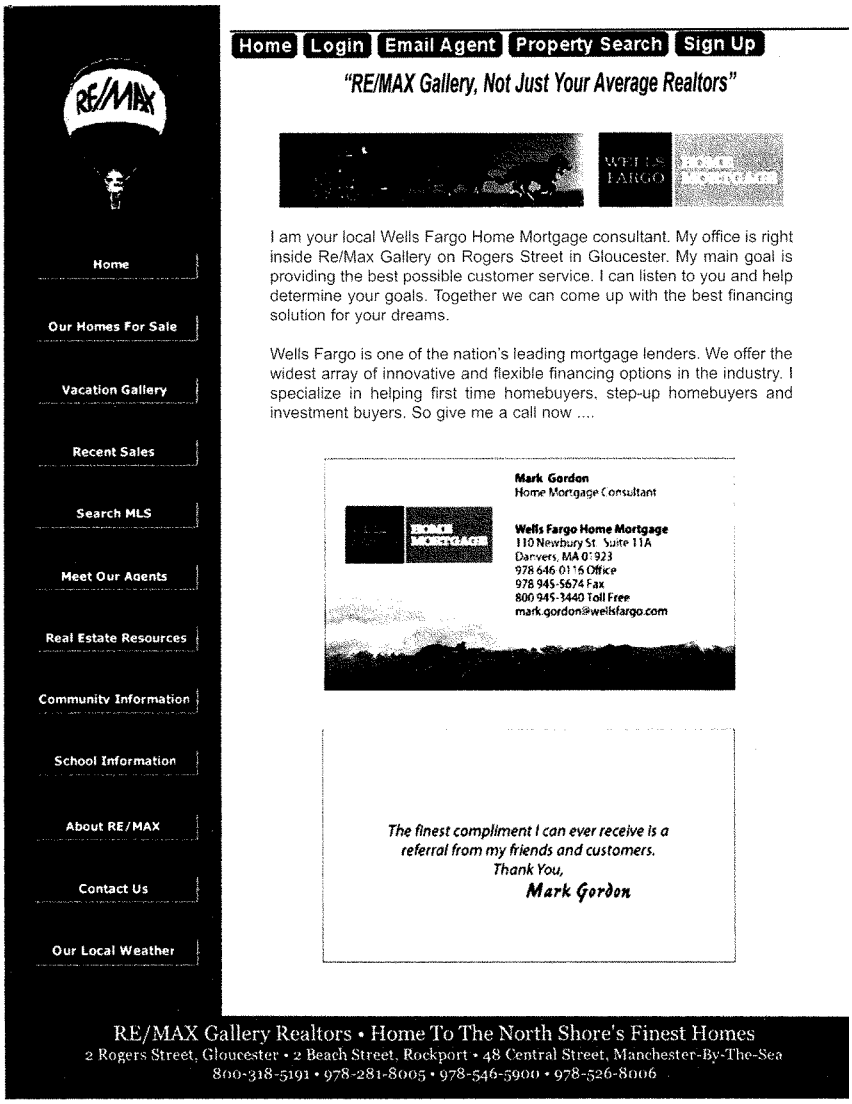
Wells Fargo Home Mortgage puts you in the driver's seat when you're home shopping. With one of the industry's broadest range of mortgage products and the expertise of a Wells Fargo Home Mortgage consultant to guide you, you'll get the financing options that are right for you. Plus, with our Wells Fargo Home Mortgage pre-approval and dedication to a simpler and faster mortgage process, you'll know you have the financing you need to move into the home you really want. All from one of the nation's leading retail mortgage lenders. We've been helping people get to their *Next Stage* for 150 years. Let us help make your *Next Stage* the home you really want.

Baraboo • 502 Oak Street • Baraboo, WI 53913 • (608) 356-1200 | Middleton • 6522 University Ave • Middleton, WI 53562 • (608) 827-2005
Cottage Grove • 4706 Cottage Grove Road • Madison, WI 53716 • (608) 221-5600 | Monona • 103 River Place • Monona, WI 53716 • (608) 270-2070
Dodgeville • 178 N. Iowa Street • Dodgeville, WI 53533 • (608) 935-1035 | Portage • 120 Henry Street, Suite 3 • Portage, WI 53901 • (608) 742-7286
East Towne • 4302 East Towne Blvd. • Madison, WI 53704 • (608) 221-1404 | Stoughton • 911 W. Main Street • Stoughton, WI 53589 • (608) 873-2967
Elkhorn • 108 W. Court Street, Suite 104 • Elkhorn, WI 53121 • (262) 723-8858 | Wall Street • 5315 Wall Street, Suite 105 • Madison, WI 53718 • (608) 244-5600
Janesville • 2525 Milton Avenue • Janesville, WI 53545 • (608) 752-1392 | West Towne • 6325 Gammon Road • Madison, WI 53719 • (608) 827-2050

PREFERRED ALLIANCE

SUPERIOR SERVICE, SATISFACTION, & RESULTS

site index | consumer notices | copyright © 2005 First Weber Group


Home
Login
Email Agent
Property Search
Sign Up
"RE/MAX Gallery, Not Just Your Average Realtors"
WELLS FARGO
I am your local Wells Fargo Home Mortgage consultant. My office is right inside Re/Max Gallery on Rogers Street in Gloucester. My main goal is providing the best possible customer service. I can listen to you and help determine your goals. Together we can come up with the best financing solution for your dreams.
Wells Fargo is one of the nation's leading mortgage lenders. We offer the widest array of innovative and flexible financing options in the industry. I specialize in helping first time homebuyers, step-up homebuyers and investment buyers. So give me a call now ....
Mark Gordon
Home Mortgage Consultant
Wells Fargo Home Mortgage
110 Newbury St Suite 11A
Danvers, MA 01923
978 646 0116 Office
978 945-5674 Fax
800 945-3440 Toll Free
mark.gordon@wellsfargo.com
The finest compliment I can ever receive is a referral from my friends and customers.
Thank You,
Mark Gordon
Home
Our Homes For Sale
Vacation Gallery
Recent Sales
Search MLS
Meet Our Agents
Real Estate Resources
Community Information
School Information
About RE/MAX
Contact Us
Our Local Weather
RE/MAX Gallery Realtors • Home To The North Shore's Finest Homes
2 Rogers Street, Gloucester • 2 Beach Street, Rockport • 48 Central Street, Manchester-By-The-Sea
800-318-5191 • 978-281-8005 • 978-546-5900 • 978-526-8006

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6091
WWW.COV.COM

WASHINGTON
NEW YORK
LONDON
BRUSSELS
SAN FRANCISCO

JOHN C. DUGAN
TEL 202.662.5415
FAX 202.778.5415
JDUGAN@COV.COM

May 9, 2001

MEMORANDUM TO AMERICAN BANKERS ASSOCIATION

Re: Legislative History of Real Estate Provisions of Financial Modernization Legislation

This memorandum summarizes our research on the legislative history of the financial modernization legislation regarding the intent of Congress to prohibit real estate related activities from being classified as "financial in nature." We reviewed the bills, committee reports, hearings, and floor debates concerning these proposals in the 104th Congress (1995-96), 105th Congress (1997-98), and the 106th Congress (1999-2000). We also reviewed the comments of the National Association of REALTORS (NAR) with respect to the inclusion of real estate management and brokerage within the scope of permissible activities for financial holding companies.

A. Overview

Prior to enactment of the Gramm-Leach-Bliley Act (GLB Act) in 1999, bank holding companies were not permitted to engage in real estate brokerage or management activities under the Federal Reserve Board's regulatory interpretation of the "closely related to banking" standard in the Bank Holding Company Act (BHCA). The GLB Act replaced that standard for financial holding companies (FHCs) with the "financial in nature" test. By its express terms, the "financial in nature" test is substantially broader than the "closely

related to banking" standard, especially in light of the four expansive statutory criteria that must be considered in making a "financial in nature" determination. On its face, nothing in the statutory language of the new test suggests in any way that Congress intended to preclude a regulatory interpretation that real estate brokerage and real estate management are "financial in nature." Indeed, one part of the test affirmatively directs the Federal Reserve to determine the extent to which FHC transactions for third parties (such as brokerage) are "financial in nature."

Nevertheless, some have suggested that the legislative history shows that Congress did not intend that the new "financial in nature" test be used to permit FHCs to engage in real estate brokerage and real estate management. Accordingly, we have reviewed the legislative history of the "financial in nature" test, not just in the 106th Congress, when the GLB Act was enacted, but also in (1) the 105th Congress, when virtually the same "financial in nature" test was considered in predecessor versions to the GLB Act; and (2) the 104th Congress, in which the House Banking Committee adopted a less expansive "financial in nature" standard. In addition, we reviewed the testimony of the NAR during this five-year period.

Based on this review, we conclude that the legislative history of the "financial in nature" test fails to demonstrate that Congress intended in the GLB Act to limit the broad scope of the statutory language of the new test so as to preclude a regulatory determination that real estate brokerage and real estate management are, in fact, "financial in nature." In particular, the legislative history shows the following:

- Where Congress was concerned in the GLB Act about banking organization involvement in specific types of real estate activities, it considered and

adopted specific prohibitions, *i.e.*, real estate development and investment were prohibited for financial subsidiaries of banks. Yet no such prohibitions or restrictions were adopted for real estate brokerage or real estate management.

- The legislative history in the 106th Congress when the GLB Act was enacted – committee reports, floor debates, and hearing records – includes absolutely nothing to suggest that "financial in nature" should be interpreted to preclude real estate brokerage or real estate management.

- NAR appears to have fully understood at the outset of the modern debate on financial modernization in 1995 that "financial in nature" might be interpreted to permit FHCs to engage in real estate brokerage and real estate management. NAR conditioned its support for any such test on a Congressional "clarification" that the new test would include a prohibition on banking organizations engaging in such activities. Yet neither Congress as a whole nor any of its committees ever provided any such clarification in statutory language in any version of financial modernization legislation considered during this period, including the final version of the GLB Act. In addition, although NAR requested in the 106th Congress that the legislation "expressly declare that real estate brokerage . . . and related activities (including property management and counseling) are not financial activities," Congress never provided any such declaration, expressly or otherwise.

- Moreover, while a single House Banking Committee report in the 104th Congress stated that a narrower version of the financial in nature test should be interpreted to prohibit real estate brokerage and management, that type of statement was never repeated either by subsequent committee reports in subsequent Congresses or by later-adopted legislative language. To the contrary, in the 105th Congress the "financial in nature" was expanded to include four broad criteria and to direct federal regulators to determine the extent to which FHC activities on behalf of third parties (such as brokerage) were permissible under that standard. These same expansions were then included in the final "financial in nature" test enacted by the 106th Congress.

B. Change in Statutory Standard for Permitting New Activities

Before enactment of the GLB Act, a bank holding company was generally prohibited from engaging in any nonbanking activity unless such an activity (1) was specifically authorized as permissible under the BHCA, or (2) was deemed by the Federal Reserve Board to be "so closely related to banking . . . as to be a proper incident thereto" (the

"closely related" standard). Neither real estate brokerage nor real estate management was a specifically authorized activity under the BHCA. In addition, the Federal Reserve exercised its regulatory discretion to find that both activities did ***not*** satisfy the "closely related" standard.[1]

Under the GLB Act, a bank holding company may become an FHC if it satisfies certain requirements related to capital, management, and the Community Reinvestment Act. An FHC may engage in any activity that is "financial in nature or incidental to such activity."[2] Under this "financial in nature" test, an FHC may engage in a much broader range of activities than an ordinary bank holding company, including, but not limited to, certain activities that are specifically listed in the statute.[3] This expanded list includes any activity that had previously been deemed to satisfy the "closely related to banking" standard for ordinary bank holding companies.[4] Neither real estate brokerage nor real estate management is on this expanded statutory list.

In addition to the expanded list, an FHC may engage in any other activity that the Federal Reserve and Treasury Department jointly determine to be "financial in nature." The GLB Act establishes four broad factors for determining whether a non-listed activity is "financial in nature." The Board and Treasury must consider:

---

[1] 12 C.F.R. § 225.126.

[2] 12 U.S.C. § 1843(k)(1)(A).

[3] The Federal Reserve may also determine that a nonfinancial activity is permissible for an FHC if the activity is "complementary" to a financial activity. *See* 12 U.S.C. § (k)(1)(B).

[4] 12 U.S.C. § 1843(k)(4)(F).

1. The purposes of the BHCA and the GLB Act;

2. Changes or reasonably expected changes in the marketplace in which FHCs compete;

3. Changes or reasonably expected changes in the technology for delivering financial services; and

4. Whether an activity is necessary or appropriate to allow an FHC to (i) compete effectively with any company seeking to provide financial services in the United States; (ii) efficiently deliver information and services that are financial in nature through the use of technological means; or (iii) offer customers any available means for using financial services.[5]

The GLB Act's new test also expressly directs the Board to determine the extent to which "arranging, effecting, or facilitating financial transactions for the account of third parties" – which would clearly include brokerage activities – are activities that are "financial in nature."[6]

In essence, the greatly expanded "financial in nature" test, including the four broad factors and express direction to define the scope of permissible activities for the account of third parties, replaced the much narrower "closely related to banking" standard applicable to ordinary bank holding companies. The issue is whether the legislative history indicates any Congressional intent to limit the broad new test and factors so as to preclude a regulatory determination that real estate brokerage and real estate management are "financial in nature."

---

[5] 12 U.S.C. § 1843(k)(3).

[6] 12 U.S.C. § 1843(k)(5).

C. Legislative History

1. Legislative History in the 104th Congress (1995-96)

H.R. 1062, the first Leach-sponsored predecessor to the GLB Act, included a financial in nature standard that was a more limited precursor to the "financial in nature" test adopted in the GLB Act.[7] (The 1062 standard did not include the four broad factors that were added later.) H.R. 1062 as introduced and reported in the House Banking Committee contained no restrictions on the federal regulators' power to classify real estate activities as "financial" at a later date.

The only suggestion that real estate activities might not be included as "financial in nature" in the 104th Congress (or since) was a statement in the House Banking Committee Report to the effect that "real estate brokerage is not currently a permissible activity for bank holding companies" and that, under the H.R. 1062 standard, "real estate brokerage should not be found by the Board to be 'financial in nature.'"[8] Such a qualification, however, was not reflected in the bill's language as reported, and was never repeated either by subsequent committee reports in subsequent Congresses or by later-adopted legislative language. To the contrary, as described below, the test was expanded during the 105th Congress to include the four expansive criteria and the affirmative direction to the federal regulators to define the scope of permissible FHC transactions for the account of third parties. This expanded version of the test was then enacted by the 106th Congress.

---

[7] H.R. Rep. 104-127, pt. 3, at 32-33 (1995) (Section 121).

[8] *Id.* at 96.

2. Legislative History in the 105th Congress (1997-98)

In the 105th Congress, the House Banking Committee, the House Commerce Committee, the full House of Representatives, and the Senate Banking Committee each passed versions of financial modernization that included, in nearly identical language, an expanded financial in nature test – and that language was virtually identical to the language of the financial in nature test that became law in the GLB Act. Specifically, H.R. 10, which was the next Leach-sponsored financial modernization bill (and the predecessor of the version of H.R. 10 that was introduced in the 106th Congress), again replaced the "closely related to banking" standard of BHCA with the "financial in nature" test that Congress ultimately adopted in the GLB Act.[9] Unlike H.R. 1062, H.R. 10 included the four expansive factors eventually adopted in the GLB Act (listed above, pp. 4-5) for determining what constitutes a "financial" activity.[10] This same expanded language was included in the versions adopted by other committees and the full House in the 105th Congress, and the inclusion of the four factors expressly recognized that the term "financial in nature" was an evolving concept left to the definition of the federal regulators.[11]

Also during the 105th Congress, the House Commerce Committee adopted the provision, which appeared in all subsequent versions of the bill, that expressly directed the federal regulators to issue regulations defining the extent to which FHC transactions for the

---

9 H.R. Rep. 105-164, pt. 1, at 6-8 (1997) (adopting 12 U.S.C. § 1844(a)(2)).

10 *Id.* at 7-8 (adopting 12 U.S.C. § 1844(a)(3)(O)).

11 H.R. 10, 105th Cong. § 103(a) (passed by House May 13, 1998); S. Rep. 105-336, at 19-20 (1998); H.R. Rep. 105-164, pt. 3, at 7 (1997) (Commerce Comm.) (adopting 12 U.S.C. § 1844(c)(4)).

account of third parties, such as brokerage, are "financial in nature."[12] Such an affirmative statutory direction shows that, rather than deciding the issue itself, Congress intended for the regulators to decide at a later time the extent to which brokerage and other FHC activities for third parties are permissible under the Act.

None of the committee reports in the 105th Congress reiterated the type of statement concerning restrictions on real estate brokerage or management that had been made by the House Banking Committee in the 104th Congress. Moreover, unlike H.R. 1062 in the 104th Congress, some of the Committee-passed bills in the 105th Congress included specific restrictions on bank operating subsidiary involvement in real estate development or investment, but no such restrictions on real estate brokerage or management.[13] Specific restrictions on some real estate activities but not others is strong evidence that Congress did not intend to restrict those activities that were not expressly prohibited. Put another way, Congress clearly knew how to restrict real estate activities with which it was concerned, as it demonstrated with its restrictions on real estate development and investment. Yet, in all of the bills in the 105th Congress, as with H.R. 1062 in the 104th Congress, Congress included ***no*** such specific restrictions or prohibitions on real estate brokerage or management. Such selective omissions, coupled with the express direction described above, strongly suggest that Congress intended to let the regulators determine whether real estate brokerage and management activities are "financial in nature."

---

12 H.R. Rep. 105-164, pt. 3, at 7 (1997) (adopting 12 U.S.C. § 1844(c)(4)).

13 *See, e.g.*, H.R. Rep. 105-164, pt. 1, at 28 (Banking Comm.) (Section 5136A(a)(6)).

3. *Legislative History in the 106th Congress (1999)*

Nothing in the legislative history of the GLB Act in the 106th Congress suggests any Congressional intent to limit the regulatory interpretation of the "financial in nature" factors so that they would not apply to real estate brokerage or management.[14] Indeed, we searched the Conference Committee Statement of Managers, the committee reports from all relevant committees, the floor debates, and the hearing records, and we found no statements by any member of Congress or any Congressional committee regarding an intent to limit the permissibility of real estate brokerage or management for financial holding companies.

The versions of this legislation that passed the House Banking Committee, the House Commerce Committee, the Senate Banking Committee, the full House, the full Senate, and the Conference Committee included –

- The same expansive financial in nature standard as was ultimately enacted in the GLB Act, with the same four broad factors and the same direction to the

---

[14] *See also* Statement of Laurence H. Meyer, Member, Board of Governors of the Federal Reserve Sys. Before Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S. House of Representatives (May 2, 2001), at 4:

> While the GLB Act and its legislative history do not contain any direct evidence of congressional intent with respect to real estate brokerage and management activities, the statute's prohibition on financial subsidiaries engaging in real estate investment and development is indirect evidence of legislative intent. The existence of this limited real estate provision in the GLB Act suggests that Congress thought about real estate activities in connection with the act and determined to leave unresolved the question of whether financial holding companies or financial subsidiaries should be permitted to act as real estate brokers or managers.

Federal Reserve to issue regulations concerning permissible FHC activities for third parties.[15]

- Specific restrictions on bank operating subsidiary involvement in real estate development and investment (in some bills but not others).[16]
- *No* specific restrictions or prohibitions on real estate brokerage or real estate management.
- *No* references in accompanying Committee reports, as in the 104th Congress, stating that the scope of the broader "financial in nature" test should exclude real estate brokerage or management activities.

D. *NAR's Testimony*

NAR apparently did not testify in person on financial modernization issues in the 106th Congress, which enacted the GLB Act and its expansive "financial in nature" test. NAR did, however, submit one written statement for the record to the Senate Banking Committee in February 1999. Representatives of NAR also testified before the House Committee on Banking and Financial Services in the 104th and 105th Congresses on proposed legislation that included a standard that eventually evolved into the broad "financial in nature" test that was adopted in the GLB Act.

In its appearances and statement for the record, NAR opposed allowing any type of banking company involvement in real estate brokerage, management, investment, or development. Its principal claim was that all non-lending real estate activities were

---

[15] S. 900, 106th Cong. § 103; H.R. 10, 106th Cong. § 103; H. R. Rep. 106-434, at 6, 9 (1999) (conference report); S. Rep. 106-44, at 21 (1999); H.R. Rep. 106-74, pt. 1, at 6-7 (1999) (Banking Comm.); H. R. Rep. 106-74, pt. 3, at 6-7 (1999) (Commerce Comm.).

[16] *See* H.R. Rep. 106-434, at 159-60 (1999) (conference report) (noting that conference receded to House version which included specific real-estate related prohibitions on national bank subsidiaries rather than the Senate version which did not contain such specific restrictions).

"commercial," not "financial," and that it was critical to preserve the separation of banking and commerce by preventing banking organizations from engaging in commercial activities.

In this context, in the 104th Congress in 1995, NAR's testimony addressed real estate issues raised by H.R. 1062.[17] NAR stated expressly that its support for H.R. 1062 was conditional on clarifying language in the bill that real estate activities other than lending would be prohibited under the new structure.[18] This position was an implicit acknowledgment that the new "financial in nature" standard could be interpreted to authorize something that was not authorized by the then-existing "closely related to banking" standard, *i.e.*, real estate brokerage and management activities for financial holding companies. The Committee acknowledged in its report that real estate brokerage was not then permissible for bank holding companies, and that it should not be found to be permissible under H.R. 1062's version of the "financial in nature" standard either (a statement that was never repeated in any subsequent legislative history).[19]

In the 105th Congress in 1997, NAR's testimony on the first version of H.R. 10 (the second Leach-sponsored predecessor to the GLB Act) was less straightforward than it was in the 104th Congress.[20] NAR did not specifically condition its support for H.R. 10 on

---

17 *See H.R. 1062, The Financial Services Act of 1995, Glass-Steagall Reform, And Related Issues: Hearings Before House Committee on Banking and Financial Services*, pt. 4, 104th Cong. 20, 147 (1995) (testimony of Edmund G. Woods, National Ass'n of Realtors).

18 *See id.* at 149.

19 *See* H.R. Rep. 104-127, pt. 3, at 96 (1995).

20 *See Financial Modernization: Hearings Before the House Committee on Banking and Financial Services*, pt. 1, 105th Cong. 133, 712 (1997) (testimony of Russell K. Booth, National Ass'n of Realtors).

specific changes to clarify its incorporation of the then-existing regulatory ban on bank holding company involvement in real estate brokerage or management. NAR even supported the general regulatory framework of H.R. 10, and supported H.R. 10 as the "starting point" for Committee deliberations.[21] Nevertheless, NAR was careful not to state its support for H.R. 10 as a whole, and it reiterated its opposition to banking industry participation in real estate activities as "commercial," even if conducted in a financial holding company with strong firewalls.[22] Notwithstanding these objections, the committees in the 105th Congress expanded the "financial in nature" test to a broader standard than that proposed in the 104th Congress by adding, as described above, the four broad factors and the express directive to the regulators to determine the scope of permissible FHC activities for third parties. In doing so, the committees did *not*, as the House Banking Committee did in the previous Congress, indicate in any way that the pre-existing prohibition on real estate related activities under the "closely related to banking" standard should be carried over to the expanded "financial in nature" test.

In the 106th Congress, when the GLB Act was enacted, the sole NAR statement submitted for the record to the Senate Banking Committee acknowledged that the draft legislation before the Committee, like the final language in the GLB Act, prohibited real estate development and investment activities in subsidiaries of banks.[23] NAR approved of

---

21 *Id.* at 714.

22 *See id.* at 716.

23 *The Gramm-Leach-Bliley Act: Financial Services Modernization: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs*, 106th Cong. 432, 433 (1999) (Statement of National Ass'n of Realtors) (S. Hrg. 106-426).

this prohibition as "necessary." The statement also acknowledged implicitly, however, that the draft bill did *not* include any such prohibition on real estate brokerage or management activities. Accordingly, NAR "urge[d] . . . that the legislation *expressly declare* that real estate brokerage . . . and related activities (including property management and counseling) are not financial activities."[24] Despite this specific request, no subsequent legislative language or legislative history regarding the GLB Act, including the final language that was enacted, included any such declaration, express or otherwise.

E. Conclusion

Notwithstanding NAR's requests, the only specific prohibitions that Congress adopted in the legislative language of the GLB Act with respect to real estate activities were the restrictions on real estate development and investment by financial subsidiaries of banks. No such specific restrictions or prohibitions were adopted with respect to real estate brokerage or real estate management. In addition, Congress expanded the financial in nature test to include the four broad factors and the express delegation to federal regulators to determine the scope of permissible FHC activities engaged in for third parties.

Similarly, nothing in the legislative history describing this expanded test suggests in any way a Congressional intention to preclude or limit the regulators' discretion to determine that real estate brokerage or management are "financial in nature." The one restrictive statement made in the House Banking Committee Report in the 104th Congress was never repeated either in subsequent committee reports in subsequent Congresses, floor

---

[24] *Id.* at 433 (emphasis added).

statements, or later-adopted legislative language. To the contrary, the more expansive "financial in nature" criteria and the express delegation to the regulators were adopted by various committees and the full House in the 105th Congress, and enacted by the 106th Congress.

In sum, nothing in the legislative language or legislative history of the GLB Act suggests any intent to preclude a regulatory determination by the Federal Reserve Board and the Treasury Department that real estate brokerage and real estate management activities are "financial in nature."

John C. Dugan
Keith A. Noreika

The Real Estate Industry is Not Concentrated

The ABA testimony makes a common error in equating franchise with ownership. The top three firms mentioned in the testimony are franchises (RE/MAX and Prudential) and a firm that combines several franchises and ownership of real estate brokerages (Cendant). In 2003, the top three firms represented less than 8 percent of the market and the top 75 firms represented less than 18 percent of the U.S. real estate market. Cendant, through its subsidiary NRT, is the largest firm with 4.85 percent of the market, followed by Home Services of America Inc. (1.87 percent) and Long and Foster Companies Inc. (1.01 percent).

Market Share of Real Estate Firms, 2003
By Number of Sides

	Firm	Sides 2003	Share (%)
1	NRT, Inc.	488,606	4.85
2	HomeServices of America, Inc.	188,465	1.87
3	Long & Foster Companies, Inc.	101,608	1.01
4	Weichert, Realtors	101,000	1.00
5	Real Living, Inc.	40,243	0.40
6	Prudential Fox & Roach Realtors	32,293	0.32
7	GMAC Real Estate-Company Owned Operations	29,874	0.30
8	Howard Hanna Holdings	29,114	0.29
9	John L. Scott Real Estate	25,694	0.25
10	Crye-Leike, Inc.	24,817	0.25
11	Realty Executives, Inc.	24,251	0.24
12	Coldwell Banker United, Realtors	22,955	0.23
13	West USA Realty, Inc.	19,838	0.20
14	RE/MAX Equity Group, Inc.	18,877	0.19
15	RE/MAX Greater Atlanta	18,504	0.18
16	Realty USA	18,235	0.18
17	Watson Realty Corp., Realtors	18,099	0.18
18	RE/MAX Allegiance	17,883	0.18
19	Baird & Warner, Inc.	17,834	0.18
20	Ebby Halliday, REALTORS	17,529	0.17
21	Allen Tate Company	17,422	0.17
22	Coldwell Banker Bain Assoc./Barbara Sue Seal	17,333	0.17
23	Coldwell Banker Success Realty	17,318	0.17
24	Real Estate One	16,822	0.17
25	Prudential California/Nevada/Texas Realty	16,739	0.17
26	Coldwell Banker HomeSale Services Group	12,670	0.13
27	Shorewest Realtors, Inc.	12,438	0.12
28	Prudential Douglas Elliman Real Estate	11,719	0.12
29	Prudential Connecticut Realty	11,620	0.12
30	First Team Real Estate - Orange County	11,606	0.12
31	Sibcy Cline, Inc.	11,351	0.11
32	Prudential Carolinas Realty (NC)	11,213	0.11
33	RE/MAX Alliance	10,959	0.11

34	Century 21 Town & Country	10,852	0.11
35	First Weber Group, Inc.	10,712	0.11
36	Prudential Carolina Real Estate (SC)	10,324	0.10
37	Latter & Blum, Inc./Realtors	10,210	0.10
38	RE/MAX Results	10,126	0.10
39	Coldwell Banker Prime Properties, Inc.	10,011	0.10
40	Keller Williams Realty North Texas/New Mexico	9,959	0.10
41	Prudential Florida WCI Realty	9,923	0.10
42	Metro Brokers, Inc./GMAC	9,736	0.10
43	William E. Wood & Associates	9,646	0.10
44	Century 21 Realty Group Companies	9,404	0.09
45	William Raveis Real Estate, Inc.	9,203	0.09
46	Nothnagle Realtors	9,069	0.09
47	F.C. Tucker Company, Inc.	9,064	0.09
48	Harry Norman, Realtors	8,884	0.09
49	Hunt Real Estate ERA	8,875	0.09
50	Lyon Real Estate	8,736	0.09
51	Prudential Northwest Properties	8,720	0.09
52	Prudential Gardner, Realtors	8,706	0.09
53	Coldwell Banker Legacy	8,618	0.09
54	Fonville Morisey Realty, Inc.	8,517	0.08
55	John Hall & Associates, Inc.	8,400	0.08
56	Keller Williams Realty	8,103	0.08
57	Prudential Atlanta/Georgia Realty	8,000	0.08
58	RE/MAX 100 Real Estate	7,975	0.08
59	Northwood Realty Services	7,878	0.08
60	Keller Williams Realty	7,869	0.08
61	Alain Pinel Realtors, Inc.	7,854	0.08
62	Prudential Gary Greene Realtors	7,850	0.08
63	Coldwell Banker Howard Perry & Walston Realty	7,844	0.08
64	Century 21 Judge Fite Company	7,835	0.08
65	Carpenter GMAC Real Estate	7,735	0.08
66	Tomlinson Black Group of Companies	7,689	0.08
67	Realty Executives of Nevada	7,377	0.07
68	Coldwell Banker The Real Estate Group, Inc.	7,297	0.07
69	RE/MAX Gold Real Estate	7,283	0.07
70	Century 21 Aadvantage Gold	7,077	0.07
71	Counselor Realty, Inc.	7,026	0.07
72	Jack Conway & Company, Inc.	6,926	0.07
73	Rose & Womble Realty Company, L.L.C.	6,910	0.07
74	Century 21 Alliance	6,828	0.07
75	Patterson-Schwartz Real Estate	6,779	0.07

Source: Real Trends, 2004 and NAR

Note: The total number of sides used to calculate the market share is the Total EHS (SF + Condos and Coops) - % FSBO -% Purchases from Homebuilders. This number is doubles to equate sides to sales. In 2003, the denominator was 10,077,120

Market Share
Percent

30.07	**Top 500**
19.27	**Top 100**
12.46	**Top 20**
10.54	**Top 10**

Answers to Questions Asked by

the Honorable Ginny Brown-Waite

Member, House Financial Services Committee

Regarding June 15, 2005 Committee hearing:

"Protecting Consumers and Promoting Competition in Real Estate Services"

1) Please explain what has changed in the interpretation of the GLB Act and the intent of Congress to warrant consideration of expanded bank powers into real estate brokerage and management.

Nothing has changed. The rationale for permitting national banks and holding companies to engage in real estate brokerage and management services was already contained in the Gramm-Leach-Bliley (GLB) Act of 1999 at the time of its enactment. The GLB Act instructed the Federal Reserve Board and the Treasury Department to periodically authorize new activities that are financial in nature or incidental to a financial activity, for example because "such activity is necessary or appropriate to allow a financial holding company ...to... compete effectively with any company seeking to provide financial services in the United States." In keeping with the language and intent of the GLB Act, ABA requested in 2000 that real estate brokerage activities be considered permissible activities for national banks and financial holding companies.

Real estate brokerage firms have for many years offered mortgage products that compete directly with bank mortgages. Mortgages and insurance products, which large real estate firms also offer their customers, are financial services. The buying of a house is likely the most significant financial decision of an American's life. Banks in over half the states are authorized already by their state charters to offer real estate brokerage services. Granting national banks the same authority would increase competition to the benefit of consumers, encourage innovation in the marketplace, and establish parity between all state- and federally chartered banks.

Congress did not authorize banks or bank holding companies to engage in real estate development or investment primarily because these activities would place bank capital at risk. However, *brokerage* and *management* activities have no relationship to bank capital and therefore do not pose safety and soundness risks to either the banks themselves or to the deposit insurance system. Banks are not seeking to own or hold the property they broker or manage.

2)

- ***Why might a banking company want to own a real estate brokerage firm?***
- ***How do you envision the structure of such ownership?***
- ***What are the financial benefits for national, megabanks having corporate control of small business-like real estate firms?***

Banking companies, particularly smaller, community-based banks, have been experiencing increased competition for business from locally-based real estate agents that are affiliated with national realty companies that offer mortgages.

The success of real estate companies offering mortgages, at a time when most banks cannot broker real estate, point to the attraction, to the consumer, of being able to conveniently shop for a home and a mortgage from the same company. Buying a home is generally the largest financial transaction an individual will ever make. By brokering real estate, banks will simply be meeting an obvious customer demand.

Similar to the manner in which banks have structured their ownership of insurance agencies, national banks that elect to engage in real estate services would most likely do so through a real estate subsidiary that operates as a unique financial entity within a financial holding company.

Contrary to popular belief, 90 percent of national banks are small, community-based enterprises. These are the banks that will benefit the most from being able to partner with or own a real estate brokerage firm. Owning or partnering with a real estate brokerage will give these banks the opportunity to recapture some of the mortgage business lost to national realty businesses that offer mortgages. Moreover, it appears that half of the 10 largest banking firms 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.

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.

3) ***How do you reconcile [the contention that consolidation within the banking industry has resulted in less competition] and that expanding into real estate services will increase competition?***

The real estate industry is actually more concentrated than the banking industry. In fact, as of this year the top three firms in the brokerage business control 56 percent of the market. By comparison, the top 50 banks have 56 percent of the banking market.

Consumers enjoy a wider selection of and greater access to financial services today than at any point in history. The entry of new players in a marketplace naturally increases competition. This is why some very powerful interests in the real estate business, such as the National Association of Realtors (NAR), oppose banks offering real estate brokerage services.

And because consolidation within the real estate industry is occurring at breakneck speed, small realty companies are far more likely to be purchased by one of the major real estate firms than by a bank. Many real estate brokers have told 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 the provision of capital, to compete with the large national real estate firms.

4) ***Why should the public believe that banks providing real estate services will result in the lowering of costs and an improvement in services?***

Currently, there is very little active competition in real estate brokerage, as evidenced by stagnant commission rates. Neither banks nor NAR determine how many service providers the market can sustain. This is a function of market competition. Banks would compete on price and quality, just like all businesses do. Today, consumers seek the benefits and convenience of one-stop service, which brings together all the elements of a complex transaction, such a home purchase, under one roof. Banks that offer service packages that include real estate brokerage, insurance brokerage, and mortgage origination would realize efficiencies that could lead to substantial convenience and savings for consumers. Large, national real estate firms offer this type of one-stop service already. Permitting banks to engage in this activity would further increase competition.

5)

– Today, how many state chartered bank are exercising their right to conduct real estate brokerage activities?
– What type of activities are they undertaking?
– What has been the experience of state-chartered banking institutions in the business of real estate brokerage and management?

Very few state chartered banks are exercising their right to conduct real estate brokerage. At the same time, we have noticed an increased interest on the part of community banks over the course of the last five years, in recognition of the fact that real estate brokerage companies are increasingly offering mortgages in competition with them.

Accordingly, several states have very recently taken action to allow state-chartered banks to provide real estate brokerage services to their customers. In 2000, as a result of negotiations between the bank and real estate trade associations in the state, the Michigan Banking Code was revised to permit state banks to "engage directly in or own in whole or in part, a real estate brokerage business." The new law also stated that a bank cannot tie the accommodation of credits to utilization of the real estate brokerage agency, nor can the bank prohibit the customer from going to other financial institutions to obtain mortgage credit. Banks owning or engaging in real estate brokerage activities in Michigan must also clearly disclose that fact in writing to anyone applying for credit or pre-qualified credit related to a real estate transaction.

In 2002, Virginia became the 28th state to authorize real estate brokerage for state banks when the General Assembly opened up the realty business to state-chartered banks beginning July 1, 2003. The legislation enacted in Virginia represented a delicate compromise reached by the Virginia Bankers Association and the Virginia Association of Realtors. The legislation authorizes a controlled subsidiary corporation of a state bank to engage in real estate brokerage.

Given the conservative nature of the banking industry, we would anticipate a slow, steady increase in the number of state-chartered banks offering real estate brokerage, as more community banks recognize their customer's desire for more convenient combinations of mortgage and real estate brokerage services.

6) ***What steps have the banking regulators taken, or intend to take, to ensure that banks and their financial holding companies manage risk appropriately?***

Real estate brokerage, as an agency activity, poses little if any risk to the bank. No bank deposits would be placed at risk as a result of permitting banks to engage in real estate brokerage or management activities, since banks would have no ownership interests in the properties they brokered or managed. The highly regulated mortgage underwriting standards that exist today would continue to apply to any and all home loans made by banks and the two key aspects of the home buying experience – brokerage and lending – would remain entirely separate, as they are today.

Bank involvement in real estate brokerage and management services is 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 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.

National Association of REALTORS® Responses to Questions from Congressman Steve Pearce

Can you describe the discussion regarding real estate brokerage and management during the crafting of the Gramm/Leach/Bliley (GLB) legislation? Which conversations were NAR privy to, and which were they not? What negotiations took place at this time?

During the crafting of Gramm/Leach/Bliley, NAR's discussions focused on two key points: our longstanding opposition to the mixing of banking and commerce, and the fact that real estate brokerage, leasing and property management are commercial activities.

Our testimony in 1997, and later in 1998, maintained that the separation between banking and commerce should remain intact. At no time did we participate in any discussions related to making real estate brokerage and management a financial activity, nor were there any negotiations on this point that NAR was a party to.

Specifically, the primary focus for NAR during the Gramm/Leach/Bliley Act (GLBA) debate, and its predecessor – the Financial Services Modernization Act (H.R. 10) – was the provision known as the commercial basket. This provision would have allowed financial holding companies to earn a set percentage of profits from commercial activities. Such commercial activities included real estate.

In the 105th Congress, NAR actively worked at all levels of the debate to prevent passage of the commercial basket provision. H.R. 10 made it out of the House Banking Committee with a 10 percent commercial basket provision. NAR worked with Reps. Leach (IA), Bereuter (NE) and Campbell (CA), who introduced an amendment striking the basket provision from the bill before final passage. This amendment was adopted by a 229 to 193 margin. The full House went on record opposing this mixing of banking and commerce, and H.R. 10 ultimately failed in the Senate.

In the 106th Congress, NAR again worked directly with House Banking Committee members during consideration of what would become GLBA. Chairman Leach's mark did not contain the commercial basket provision. Amendments to include the basket were rebuffed in Committee. The same held true during the sequential consideration of the bill in the House Energy & Commerce Committee. The House passed legislation without a commercial basket provision.

In January of 2000, then-Chairman Gramm of the Senate Banking Committee released his draft mark, which contained a 25 percent commercial basket provision. NAR spoke to both the Chairman and every Senator on the Banking Committee. We expressed strong concerns regarding the commercial basket provision. As a result, Chairman Gramm's final mark did not contain a commercial basket provision of any sort.

At this point, NAR felt that real estate was not part of the bill. There had been no discussion specifically related to real estate brokerage and property management. Debate to this point had only been in the general terms of the commercial basket.

During final conference negotiations, the rule-making provision was added to the bill. This provision allows the Treasury Department and Federal Reserve to consider new activities as financial in nature if there has been a clear change in the marketplace or technology. NAR has been told that this was one of the last provisions written in the conference committee reported bill. We were not included or consulted in discussions to include this provision in the bill.

To this date, there has certainly not been a substantive change in markets or technology that would suggest any new real estate activities are financial in nature.

What other sectors of the financial services industry were specifically discussed during the work on GLB? Were specific guidelines included in GLB regarding these industries if yes? If discussion regarding real estate brokerage and management did occur, why was nothing specific included in GLB, as contrasted with how other sectors were handled?

All of NAR's discussions on GLB focused on real estate as a commercial activity. There were no specific discussions about real estate brokerage or management, except to point out that these are commercial activities and therefore banks and financial holding companies should not be able to engage in them.

The essential debate at the time was whether to allow banks, securities firms, and insurance companies to engage in each other's businesses, repealing the prohibitions that were established in the Glass-Steagall Act.

Had the GLB Act contained language allowing banks to own real estate brokerage and management firms, NAR most certainly would have opposed the bill. NAR has a strong record of opposing banks entering real estate brokerage and management activities. Our position was widely known based on our testimony and the fact that NAR opposed previous attempts by banks to enter these businesses.

As it happened, the bills passed each body with only a slim majority.

In the late 1980s and early 1990s, the Federal Reserve Board proposed separate regulations, which would have allowed bank holding companies to brokerage real estate and later to manage real estate. In both instances, the proposed regulations were withdrawn.

It is possible that real estate brokerage and management were discussed in conference committee negotiations when the banking industry had influence with key members of Congress who were negotiating differences between H.R. 10 and S. 900. However, NAR was not privy to those discussions.

I've heard from NAR that large, national banks will be the banks to take advantage of this new opportunity in real estate brokerage and management, and bankers say that the new players will be the rural and community banks. What do you anticipate would occur if HR 2660 were enacted? How do you think competition would be enhanced with large, national banks competing against rural realtors?

If H.R. 2660 were enacted, it is logical to assume that large, national banks will take advantage of owning real estate businesses. We assume this for several reasons.

First, many rural and community banks operate under state charters. About 30 states could allow those banks to own real estate companies today. Yet, very few state banks take advantage of this opportunity. There is no reason to believe that these same banks would suddenly jump into the business should the big banks gain entry.

Second, H.R. 2660 will allow the big banking conglomerates to take over major segments of the real estate industry and expand their domination of the banking and financial services industries. These banks will seek to become even more competitive by pressing for further consolidation in the industry to the disadvantage of consumers, rural REALTORS®, and community and rural bankers.

Unlike real estate agents and local banks, banking conglomerates have the advantage of huge federally insured assets, marketing budgets, and "economies of scale." Banks say they would enhance competition in the real estate market. While bank profits are at all-time highs, there is no evidence that "economies of scale" benefit consumers in any way. Moreover, real estate is a very personalized business that is time consuming, detailed, and not conducive to the kind of "standardization" that big banks claim would benefit consumers.

Another critical point to consider is that, if H.R. 2660 were enacted, financial holding company and national bank subsidiaries also could enjoy preemption of state licensing and regulation. This already has happened for the real estate-related lending industry. State consumer protections and pro-consumer laws, like anti-predatory lending statutes, have been overridden by federal regulators. Thus, federally chartered institutions are not subject to these regulations and state enforcement.

This preemption would advantage only the largest banking conglomerates. Small and rural state chartered banks, and private commercial lenders, REALTORS®, and mortgage brokers would all be competitively disadvantaged. This federal advantage would also come at the expense of consumers.

Chairman Bliley, in his testimony, discussed how they "directed the Federal Reserve Board and Treasury to periodically bring in new activities that are financial in nature...because such activity is necessary or appropriate to allow a financial holding company to compete effectively with any company seeking to provide financial services in the U.S." Why is it necessary that banks be permitted to compete with real estate brokers, if indeed real estate brokerage is determined to be a financial activity?

First, real estate brokerage and management are commercial activities. Over twenty percent of residential properties are bought with no bank financing. They are paid for with cash or with owner financing. These sales are purely contractual agreements between private citizens.

Second, there is nothing to suggest that financial holding companies need to own real estate companies to compete in the financial services sector.

Real estate brokers and banks already compete in the mortgage lending and title insurance area through joint venture agreements – the same way auto manufacturers, department stores and other commercial businesses compete in lending for their goods. In fact, banks control the great majority of mortgage loans made today. Real estate-owned mortgage companies originate less than 25 percent of home mortgages.

Additionally, through these "affiliated business arrangements," banks and real estate brokers market mortgages, insurance and other services. Such business arrangements allow both entities to work together to offer consumers one-stop shopping, while maintaining the "arm's-length" relationship that laws dictating the separation of commerce and banking require. This prevents the conflicts of interest that would arise should banks be allowed to own real estate companies directly. These joint ventures work well for banks, REALTORS®, and most importantly, consumers.

NAR is strongly opposed to mixing banking and commerce. Twenty years ago we saw the result of allowing this in the savings and loan industry. The huge taxpayer bailout that resulted should not so easily be forgotten.

July 13, 2005

Answers to Questions Asked by

the Honorable Steve Pearce

Member, House Financial Services Committee

Regarding June 15, 2005 Committee hearing:

"Protecting Consumers and Promoting Competition in Real Estate Services"

1) ***Can you describe the discussion regarding real estate brokerage and management during the crafting of the Gramm-Leach-Bliley (GLB) Act legislation? Which conversations were the [National Association of Realtors (NAR)] privy to and which were they not? What negotiations took place at this time?***

In the 20 years of debate leading up to enactment of the GLB 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.

More than a decade ago, ABA and 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, more than ten years ago, 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, NAR had every opportunity to raise the issue with Congress in 1999 and either chose not to or did so without success.

2) ***What other sectors of the financial services industry were specifically discussed during the work on the GLB Act? Were specific guidelines included in the GLB Act regarding these industries? If discussions regarding real estate brokerage and management did occur, why was nothing specific included in the GLB Act, as contrasted with how other sectors were handled?***

Insurance brokerage is a clear example of other financial services included in the GLB Act. The GLB Act's insurance provisions include strong protections for consumers and high standards of safety and soundness for banks. These include consumer disclosures, prohibitions on tying and coercion with respect to the sale of insurance in connection with credit, and, importantly, required physical separation of deposit-acceptance activities from insurance sales activities. Although these provisions were the subject of countless hours of debate several years ago, it is a testament to their proper functioning that banks' entry into insurance brokerage has caused no problems. The insurance brokerage business – whether bank-affiliated or not – remains as competitive and healthy today as it ever was. Plus, consumers have more choices in how they satisfy their insurance needs.

Unlike insurance, NAR alleges 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. To the contrary, the GLB Act itself demonstrates Congress's knowledge of this issue and 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.

3) ***What do you anticipate would occur if H.R. 2660 were enacted? How do you think competition would be enhanced with large national banks competing against rural Realtors?***

H.R. 2660 would clarify that real estate brokerage activities and real estate management activities are authorized financial activities for financial holding companies and financial subsidiaries of national banks. If enacted, H.R. 2660 would merely codify what the Federal Reserve and the Treasury Department proposed through regulation several years ago under the guidelines set forth in the GLB Act.

Both large and small banking organizations have an interest in this issue, but 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. Many community bankers view real estate brokerage as simply enhancing the services they provide to the community and solidifying customer relationships. In places where the market is sufficiently served or banks cannot offer competitive services, it is unlikely banks would seek to offer brokerage services.

For the typical community bank, the intent is not to turn real estate brokerage into a major income-producing center, but rather to provide high-quality, high-personal-touch services for customers whose needs the bankers intimately understand and whom they already serve in other capacities. As such, in communities where there are no real estate firms, community banks typically contemplate establishing a subsidiary and licensing one or more employees as real estate brokers (subject to state licensing requirements). In other instances, small banks are likely to partner with existing real estate brokers to provide these services, including Realtor-affiliated brokers. Banks would offer Realtors more employment opportunities, not fewer.

4) ***Why is it necessary that banks be permitted to compete with real estate brokers, if indeed real estate brokerage is determined to be a financial activity?***

In today's marketplace, securities firms, insurance companies and real estate firms can and do provide a full range of real estate services, from finding a home, to financing it, to insuring it. Even credit unions can offer real estate brokerage services. Banking organizations, however, are excluded from real estate brokerage activities – the crucial first step in a real estate transaction – and placed at a significant competitive disadvantage. This is especially true for smaller community banks. Bank customers and the communities they serve would benefit if banking organizations were permitted to offer these services. The one-stop real estate service aggressively advertised by such large firms as Long & Foster, Cendant Corporation, GMAC Home Services, and others are a perfect example of the type of competitive inequity that Section 103(a) of the GLB Act was intended to address, and it demonstrates why regulatory flexibility is such an important component of financial modernization.