the use of ground troops. However, at the start of this war, we told Milosevic that he did not have to worry about ground troops. That is why he is so certain that this country and NATO do not have the will to win. Ask yourselves, how much more accommodating to NATO demands would Serbia be, if they knew we were preparing an invasion? Yesterday, Milosevic announced that he has over 100,000 troops in Kosovo. This is most likely a lie, but nevertheless, could Milosevic afford to have so many troops rounding up Kosovars if he knew NATO might invade? Of course not. One of the reasons that this man has been able to continue to perpetrate war crimes in Kosovo, is precisely because he has always known that he need not fear a ground war.

Mr. President, I believe it is high time that we rectify our mistake. Mr. Milosevic has underestimated the resolve of the United States and the resolve of NATO. We will see this war through to victory. The first step to victory is a very simple one. Mr. Milosevic must understand that this country will use all of its resources to prevail. No one doubts that we have the means to win the war in Kosovo, this resolution will also demonstrate that we have the will. It does not commit the United States to a ground war, but it does state that if a ground war is necessary for NATO to meet its objectives, we will fight a ground war. In short, we will fight anywhere and anytime to accomplish this mission.

This country has faced dark days in Europe before. I think few people expressed the significance of that time better than Winston Churchill. When asked what were his goals for the war with Germany he said simply ''victory at all costs, victory in spite of all terror, victory however long and hard the road may be; for without victory there is no survival.''

I believe that if this Nation has learned any lesson from the twentieth century, it is that you do not win wars by half measures. Winston Churchill understood this. So do the American people. I hope that the Senate will demonstrate that it too understands this lesson, and will oppose tabling the McCain resolution today.

The PRESIDING OFFICER. The majority leader is recognized to move to table.

Mr. LOTT. Mr. President, I want to use my leader time to make a brief statement also.

Mr. President, I should begin by saying I understand the feeling of the sponsors of this resolution and I commend them for their dedication and their untiring efforts. But I would today, in dealing with this resolution, quote an ancient Greek historian who once said, ''Observe due measure, for right timing is in all things the most important factor.''

This resolution is out of sync with current events. There is no request for this action. NATO is not seeking additional authority. The President is not seeking additional authority. The Senate has already acted and expressed its support for the bombing campaign.

I have had my reservations about the President's policy from the beginning and I so voted; but it appears that perhaps the Administration has stopped deciding on targets by committee and that they are actually attacking targets that have greater value. We should allow that campaign to continue to work. This is the wrong language and it is at the wrong time. Currently, there seem to be some effort to find a negotiated settlement. We should encourage that.

But this language would go too far, beyond what I think the Senate is prepared to do and what is necessary and what has been requested. It authorizes the use of all necessary force and other means to prosecute this fight. That does include ground troops. I think the Senate would want to have a longer debate and want to discuss other options. For instance, when we were considering the timing of this resolution last week, we were exchanging language between the majority leader and the Democratic leader, to see if we could find language that would have broad, bipartisan support. That was interrupted by this resolution.

Let me review how we got here. This resolution was introduced weeks ago. And under the War Powers Act, it was the pending business as of last Friday. We cannot go to another matter, under the War Powers Act, once the Parliamentarian ruled that this language kicked into action the War Powers Act. So we had to either act on it or get an agreement to postpone it. I agreed and urged that we postpone it for a week or 10 days until we had some bipartisan language we could agree on. Senator MCCAIN agreed to that postponement. Senator DASCHLE indicated that he thought he could support that.

But, along the way, as Senators are entitled to do, there were objections to postponing it by unanimous consent. So we had to deal with this issue. My suggestion at that time was that we not get into a substantive debate, that we offer a procedural motion to set it aside until another time when we can better determine what is needed—if something different is required than what is already on the books, if something more is asked for by the President, or if we are ready to go forward with the War Powers Act or even a declaration of war. But I don't think we are there at this moment.

So we are forced to have this vote today. I would like to describe it as a procedural vote because I think it is. It is to table this resolution and to reserve the opportunity at some future date to have a vote on whether or not we want to give the President authority to prosecute this matter with all necessary force. I do not think that is where we are today. But I do want to say emphatically that I think the language is substantively excessive, not necessary, and uncalled for.

So, Mr. President, I urge our colleagues to support the motion to table and I so move to table the resolution. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced, yeas 78, nays 22, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—78

Abraham	Enzi	Moynihan
Akaka	Feingold	Murkowski
Allard	Feinstein	Murray
Ashcroft	Fitzgerald	Nickles
Baucus	Frist	Reed
Bennett	Gorton	Reid
Bingaman	Gramm	Roberts
Bond	Grams	Rockefeller
Boxer	Grassley	Roth
Breaux	Gregg	Santorum
Brownback	Harkin	Sarbanes
Bunning	Helms	Schumer
Burns	Hollings	Sessions
Byrd	Hutchinson	Shelby
Campbell	Hutchison	Smith (NH)
Chafee	Inhofe	Snowe
Collins	Jeffords	Specter
Conrad	Johnson	Stevens
Coverdell	Kennedy	Thomas
Craig	Kerrey	Thompson
Crapo	Kohl	Thurmond
Daschle	Kyl	Torricelli
Domenici	Levin	Voinovich
Dorgan	Lincoln	Warner
Durbin	Lott	Wellstone
Edwards	Mikulski	Wyden

NAYS—22

Bayh	Hagel	Lugar
Biden	Hatch	Mack
Bryan	Inouye	McCain
Cleland	Kerry	McConnell
Cochran	Landrieu	Robb
DeWine	Lautenberg	Smith (OR)
Dodd	Leahy	
Graham	Lieberman	

The motion to lay on the table the joint resolution (S.J. Res. 20) was agreed to.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The PRESIDING OFFICER (Mr. BUNNING). The motion to proceed to S. 900 is agreed to and the clerk will report.

The legislative assistant read as follows:

A bill (S. 900) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Does the Senator from New Mexico wish to say something before we start?

Mr. President, I ask unanimous consent to yield to Senator DOMENICI and to reclaim my time when he is finished.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 951 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me try to outline the procedure that we have agreed to by unanimous consent as we begin the debate on financial services modernization. We have agreed to have opening statements. I guess we will assume that the rest of the morning will be used up in those opening statements. I will make an opening statement, the ranking member of the committee, Senator SARBANES, will make an opening statement, and then all those who would like to make an opening statement are encouraged to come to the floor and do those statements this morning.

Under the unanimous consent agreement, Senator SARBANES would then offer a comprehensive substitute for the committee mark. That would be debated for the remainder of the morning—if there is any morning left when it is introduced—and this afternoon. When debate on that is completed, a vote would be set. It is my assumption, since we have colleagues from two States who have had a terrible natural disaster and have gone home this morning to assist in making the evaluations that will help us respond to that through our Federal emergency programs, my assumption is that we will set aside the vote until some time tomorrow when they can come back.

Under the unanimous consent agreement, at the end of the Sarbanes amendment, I, or my designee, would be recognized to offer two amendments. Those amendments will be offered and debated. And then, depending on where we are in terms of our colleagues coming back from their States that have had the natural disasters, we would begin the voting process.

The final part of the unanimous consent agreement would be a fourth amendment that Senator SARBANES, or his designee, would offer, and that would be an amendment that would strike the CRA provisions of the committee bill and insert the provisions related to CRA, which are in the Sarbanes substitute. That would get us four amendments into the process, and we would then begin the normal debate process where the floor would be open to those who seek recognition.

I know that it is the hope of our leadership that we would finish the bill this week. I don't see any reason that we can't do that. Let me say, as we begin this debate, I am willing to stay here late at night, through the night, if we need to in order to have a full debate on these issues. I think we all recognize that under the Senate rules everybody gets to have their say. Everybody gets an opportunity to offer amendments. I am hopeful that we can complete this process by Thursday. We have a long trail to follow to complete the bill.

As many people in the Senate are aware, the House has a divided jurisdiction. The House committee has acted on the bill, the Banking Committee; but the Commerce Committee, which has joint jurisdiction, is now in the process, on a bipartisan basis, of writing a bill that is very different. So I am hopeful that by this Thursday we can complete this bill and start moving toward conference and toward all the work that still lies before us.

I would be happy to yield to Senator SARBANES.

Mr. SARBANES. Mr. President, I just want to underscore a couple of the things that the able chairman of the committee just stated. This is a partial agreement that was worked out and was an effort to get the Senate into its consideration of the bill in an orderly and prompt manner. I think it will accomplish that.

A number of colleagues asked me during the last vote about making opening statements. I indicated that the chairman would be making an opening statement, and I would make one, and then the floor would be open for opening statements. We hope we can complete those, I assume, this morning before we take a break for the conference luncheons, and then we would be able to move on to the substitute amendment in the afternoon.

So we hope Members will try to keep this schedule in mind and come over sometime during the morning here. I know a number have left to go to committee meetings, but they said they wanted to come back in order to make an opening statement. We want to try to accommodate our colleagues in that regard.

On the vote schedule, I think we will have to work that out on the basis of the people who are away, so that we can accommodate everyone in terms of being able to vote, which I assume will be sometime tomorrow, as I understand it.

Mr. GRAMM. Mr. President, I think that is right. Some time between noon and 4 o'clock is the word that I received.

Mr. SARBANES. We will have to discuss that, because I think we may have a little problem with that. We may need to extend that a little bit.

Mr. GRAMM. I don't see any reason why we can't accommodate each other. We want to have a full debate. Much of the essence of the differences that exist are embodied in the first and fourth amendments. I think having a full debate is what we should do. I think it is important that people understand the issues, and I can certainly say, from my point of view, I think the better people understand these issues, the better off we are.

We are here to debate the most important banking bill in 60 years today. This bill would dramatically change the American financial system. It would knock down existing barriers that separate insurance and banking and separate securities and banking. It would create a new financial institution in America, which would still be a bank or a bank holding company, would still have the same structure, but it would be a very different institution, and it would be basically a supermarket for financial services.

Let me say, in going into the process, that my goal is to put together a bill that will provide greater diversity and financial services at a lower price to American consumers. If this bill does not meet the test of providing benefit in terms of a greater diversity and availability of product, if it doesn't meet the test of providing a lower cost for those products, for the people who do the work and pay the taxes and pull the wagon in America, then it would be my view that we have failed in this bill. That, I think, is the test that we need to use in order to judge our success or lack thereof on this bill.

In terms of barriers erected between insurance and banking and between securities and banking, most of these barriers erected in the 1920s and 1930s, what has happened that has really brought us to this point in terms of legislating this dramatic change in the American financial system is that, over time, these barriers have stopped looking like barriers, and now they look like little slices of Swiss cheese. They have large and small holes in them, some created by innovative regulators, some created by the growth of practice and convention. But the net result is that after fighting each other for 50 years to try to keep other industries out of their individual portion of the financial services industry, these three great economic forces in the American economy—the insurance industry, the banking industry, and the securities industry—have basically concluded that they would be better off in terms of an open field of competition and greater able to meet the needs of their consumers if we simply took down these barriers.

Also students of this problem—no matter what their persuasion within limits at the beginning of the debate—have concluded that the instability that exists in allowing these walls that divide these three major financial industries to continue to stand, knowing that these walls have, because of the holes in them, produced this instability and produced an unstable structure in many cases—the basic conclusion has been reached by virtually everyone engaged in the debate that we would be better off to take down these barriers than to leave them standing as they are. The debate today is not about the changes that we make in the name of financial services modernization.

That is why I believe and hope that in the end we can reach a consensus where at least 51 Members of the Senate—hopefully more—will vote for the final product of this deliberation.

What we are debating is not about what changes are to be made, but how to make those changes. That really involves basically two areas, and they will be the focal point of this debate.

The first area is the question of where these new financial services should be provided. Should these new financial services be provided within the bank itself, within the legal structure of the bank, and what capital that is invested in these new parts of the financial services industry will count as the capital of the bank itself? Or should these new financial services be provided by affiliates of holding companies outside the bank?

This is a fundamentally important question. It is a question where we have great differences of opinion. It is a question that the Chairman of the Federal Reserve Board, Alan Greenspan, believes is so important that he has said in testimony before the House Commerce Committee that if we had a bill that allowed banks to provide these expanded services within the bank itself, that bill would be so dangerous in terms of providing an unlevel playing surface—in terms of encouraging artificially the concentration of securities products being sold and serviced inside the bank—and the safety and soundness dangers with the Federal Deposit Insurance Corporation would be so great, that he and every member of the Board of Governors of the Federal Reserve Board have taken a position that it would be better to pass no financial services modernization than to undertake to allow banks to provide these new services within the bank itself.

The White House and the Treasury have taken exactly the opposite position—they favor a bill where banks can provide these services within the legal structure of the bank.

It is my understanding—I have not seen it, but it is my understanding—that we have another veto threat from the President. The number of items the President is threatening to veto has grown, and now we have gone from four items in his first letter to six items, some of which, it is my understanding, would also apply to the Sarbanes substitute and to the House bill, further raising some question about the administration's degree of seriousness about this bill.

That is our first issue. Should banks provide the new expanded financial services within the structure of the bank itself, or should they be forced to take capital out of the bank and invest it through their holding company in these separate and independent entities that, while affiliated with the bank holding company, will be independent of the bank?

That is probably the most important issue that we will vote on. I will say more about it later in my opening statement. You will hear a lot more about it as we get further into the debate.

Inevitably in a big bill like this, subsidiary issues take on great importance. One issue that has taken on very great importance in this bill is community reinvestment. I will talk more about this later when we turn to these two areas of dispute.

But let me say the real question here boils down to this simple question: Should we have a massive expansion in CRA and CRA enforcement and with it a massive expansion in regulatory burden, or should we reform the existing program to try to eliminate the growing abuse that is occurring in that program and the growing regulatory burden that exists in that program?

That will be the second major issue that we will deal with as part of this bill.

Before I turn to a discussion about what the underlying committee bill does, I just want to say a few words of thanks to people that have been important in putting this bill together.

I first want to thank Senator BRYAN and Senator JOHNSON for their help in committee in making many elements of this bill a bipartisan bill.

I joined with Senator BRYAN to adopt a provision related to how banks would sell insurance.

I thank Senator JOHNSON from South Dakota, who joined with Senator SHELBY in supporting an amendment to exempt very small rural banks from the regulatory burden of CRA.

I think the action by these two Senators really set a standard that we ought to work to meet in the rest of this bill.

I thank my Republican colleagues who sat through many long seminars on financial services modernization, for lack of a better term. I thank them for doing this with a minimum of complaint. I think the net result is that by and large the Republican members of the Banking Committee understand this issue better than we did when this issue was discussed last year. I think the net result is that we have a better bill.

I would like to thank all of my staff on the majority side of the committee. But I especially want to thank our staff director, Wayne Abernathy, our chief counsel, Linda Lord, and our financial economist, Steve McMillin, for all the work they have done on this bill and the work that they have done to make the bill better.

Finally, let me just express a regret. I regret that I have not done a better job in working with Senator SARBANES. We have had a difficult time in working together to forge a bipartisan bill. Some of this is inevitable, I think. Some of it is not. I just want to say that my inability to work with Senator SARBANES on this bill is something that I regret. I have the highest regard for his intellect and his sincerity on these issues. And while he and I do not agree on many of these issues, I don't doubt for a moment that he understands the issues and he is sincere about the position he has taken.

I think that is one of the reasons it is very hard to work out some of these issues, because, as Thomas Jefferson observed long ago, good men with good intentions in a free society often reach different conclusions. When that happens, the best we can do is to simply plow ahead. And that is what we are doing here.

Let me try to run through very quickly what I believe are the major elements in the Financial Services Modernization Act of 1999 as reported by the Senate Banking Committee. First, this bill repeals Glass-Steagall. It knocks down the barriers between insurance and banking and between securities and banking. It chooses to do this for the vast majority of the capital in the banking industry through affiliates of bank holding companies. This bill makes the decision that it is unwise and dangerous to allow large banks to provide these expanded services within the structure of the bank itself.

The majority of the members of the committee concluded that Chairman Greenspan is right, that there are strong safety and soundness arguments against allowing banks to provide these expanded services within the structure of the bank itself and that this endangers the taxpayer through the Federal Deposit Insurance Corporation.

Additionally, the majority of the members of the committee were convinced that to give banks the ability to sell these financial products within the structure of the bank, and therefore to give them the ability to internalize the inherent subsidies that are built into FDIC insurance, plus the ability of banks to borrow from the Fed window at the lowest interest rates in the country and use the Fed wire, that these implicit subsidies—which the Federal Reserve Board has estimated to be as high as 12 basis points—would be big enough to assure over time to virtually guarantee a massive degree of economic concentration, concentration whereby banks would end up dominating these markets—not because they are more inherently efficient but because they would have the advantage of the subsidies that come from undertaking these provisions within the bank.

This view was very broadly held last year. Senator SARBANES, in the bill he supported, supported this position last year. This was the position of the House bill last year. Now we have a debate as to whether or not the Congress, the Senate committee and the House itself, should reverse its position. This is not a partisan issue. I don't know how the votes are going to fall, and I know partisanship has really entered into this area. Historically, on issues like this there has been a great division on a bipartisan basis.

Congressman JOHN DINGELL, who is the ranking Democrat on the House Commerce Committee that has joint jurisdiction on this issue, has taken a very strong position that he will oppose the bill if banks are allowed to provide these services within the structure of the bank itself. It is clear that the House Commerce Committee is going to take the position of the Senate bill. This is clearly a very important issue.

An effort was made in the Senate Banking Committee to try to reach a compromise on this issue, to let very small banks that in general are not big enough to operate holding companies efficiently, yet might in a very small way want to get into other financial services such as securities and insurance—we set out a dividing line of $1 billion of assets and below for smaller banks that together when added up comprise about 18 percent of the capital of our banking system, that we would allow them to use operating subsidiaries, but with special accounting rules so they could expand services and not be precluded from the activity based on their size. However, we require any bank with assets over $1 billion or that has a holding company to use subsidiaries of holding companies so that these services are provided outside the bank.

We allow banks to underwrite municipal revenue bonds. We follow functional regulations so that whatever industry you are in, no matter what name is on your marquee, and no matter what business it is associated with, you will be regulated by the regulators who regulate that particular type of activity. We make a strong effort to reduce regulatory burden and streamline the process by giving the Federal Reserve Board the umbrella supervisory ability but requiring them in most instances to use the audits of other agencies.

The committee bill takes a very strong position in reaffirming the State regulation of the insurance business. We reaffirm that McCarran-Ferguson is the law of the land, and we require that any institution that is selling insurance in any State comply with the licensing requirements of that State. Our requirement on the State is simply that they have nondiscriminatory requirements.

We expand the resolution process, knowing that in the future there will be debate about what products are insurance products or banking products or securities products. We have a resolution process. Then we give equal standing to the contesting regulators before the court. We go to extra lengths to protect small banks and their trust departments.

Between 15 percent and 20 percent of the income of many small banks comes from trust departments. There is a very real concern that banks which are providing trust functions that might never get into financial services modernization, that might never open up a securities affiliate or op-sub could find themselves regulated by the Securities and Exchange Commission and have a dual regulatory burden, are being forced to set up an op-sub or set up a subsidiary simply to continue to do the same things in their trust department that they have always done.

We have a very strong provision to protect these small banks, and basically have the preemptive provision that if a bank is providing the service in a trust department today that they cannot be required to set up a separate entity to conduct those same services.

We have two CRA provisions in the bill. The first provision has to do with integrity. It is a very simple provision. Unfortunately, in this debate one of my great frustrations is that many people don't want to debate the issue before the Senate. As almost always happens in these cases, especially when you have an emotionally charged issue, people change the subject; they set up straw men and knock them down.

Let me make it clear that nothing in this bill in any way repeals CRA. This bill, as reported by the Senate Banking Committee, does two things in CRA. First, it has an integrity provision which says if banks have historically been in compliance with CRA, if in their annual evaluations they have been found to be in compliance not once, not twice, but three times in a row, if they are currently in compliance, then if protest groups or objectors want to come in and object to a bank action, then objector or protester has to present some substantial evidence to suggest that the bank—which has been in compliance 3 years in a row and is currently deemed to be in compliance—is out of compliance.

As I will discuss in just a moment, we have a long history of case law as it relates to what ''substantial evidence'' means. But that is the first requirement. It is simply an integrity requirement. It says that if you are in compliance with CRA and you have a long history of being in compliance, someone can't rush in at the last minute on a major bank merger, where hundreds of millions of dollars are at stake, and say they want to undertake a merger and file a protest saying that these two banks are racist or these two banks are loan sharks. These are words that have been used by people who filed these protests—without presenting one scintilla of evidence. In fact, one of the definitions of substantial evidence is ''more than a single scintilla of evidence.''

So this amendment simply says, if you are going to try to prevent a bank from doing something that it has been certified historically on a continuing basis as being in compliance to do, you have to present some substantial evidence to suggest that all these evaluations have been wrong or that something has happened since the last evaluation.

I do not understand, personally, why anyone would object to that amendment. We already require in case law that the decisions of administrators at the Federal level be based on substantial evidence. So we are really requiring by statute what is already required under case law, and I will talk about that a little more in just a moment.

Our second amendment exempts very small, rural banks from CRA. These are banks that have less than $100 million of assets. These are banks that often have between 6 and 10 employees. And these are banks that are outside standard metropolitan areas. I will talk more in a minute about the regulatory burden that is imposed by CRA on these very small banks, but since many figures have been used by people who have been critical of this proposal, let me say that while 38 percent of the banks and S&Ls in America are very small, rural institutions, together they have only 2.7 percent of the capital that is contained in our banking system nationwide. The basic argument here, which has strong roots in existing banking law and which is supported, to some degree on a bipartisan basis, is that these very small, very rural banks that do not have a city to serve, in most cases, much less an inner city, should not have massive regulatory burden imposed on them through CRA.

The next provision of the bill is that we eliminate the SAIF special reserve fund, allowing that money to go into the SAIF itself.

We cut off the unitary thrift holding company provision. This is a controversial issue. It will be debated. Let me just give a brief summary of the thinking of the majority of the members of the Banking Committee on this issue. Current law permits commercial companies to own an S&L. This is called a unitary thrift, and a decision was made in our bill to end this provision.

So, then the question is what are you going to do about commercial entities that already own S&Ls? The decision we made was to cut off, effective as of the date that we introduced the committee mark, any further applications for a commercial company to own an S&L, so that all of those applications which were filed prior to that date can be evaluated by the Federal regulator, but no new applications would be allowed.

There is a second question as to whether we should go so far as to limit the ability of commercial entities that already have thrifts to sell their thrift to another commercial interest. The majority of the members of the Banking Committee concluded that we could go as far as not allowing any new entities to come into existence. But an ex post facto law that goes back and changes the rules that thrifts operate on, after people have already invested their money—many of these entities came in and made investments of hard money during the S&L crisis; many of these commercial entities were encouraged to invest this money and in doing so they saved the taxpayer literally billions of dollars—and to come in now and say not only are we not going to allow any more unitary thrifts to come into existence, something that this bill supports, but we are going to limit what you can do with the thrift you already have, we believe that runs afoul of the takings provision of the fifth amendment of the Constitution.

We think it is very important to be aware of that conflict with the Constitution because recently savings and loans have filed suit against the Federal Government based on another bill, FIRREA, where Congress, on an ex post facto basis, went back and took back provisions when these companies entered into a contract with the Federal Government. And we are now told, based on a ruling by the Supreme Court, that we can expect billions of dollars of payments to these S&Ls because the Federal Government has breached its contract. We have set out a line that we are not willing to go over, and that line is we are not willing to violate the Constitution.

We have provisions that allow community banks of less than $500 million to be members of and to use the Federal Home Loan Bank. We also allow them to use small business, small farm and small agriculture lending as collateral for loans, and we believe this will improve the liquidity of small banks and their ability to serve their communities.

We have a 3-year freeze on existing FICO assessment. We are discussing this issue at great length, but basically when we made a decision to move the two insurance rates to the same level, there was also a discussion about merging the two insurance funds. But Congress never acted on that issue. The majority of the members of the committee in our underlying bill believed there ought to be a discussion about that issue and that we ought to make a decision on that issue.

Finally, in terms of the bill itself, we mandate a major GAO study of subchapter S corporations that are engaged in the banking business as a first step toward changing the way we tax very small banks. Many of our colleagues will remember that last year we were able to allow small banks with fewer than 75 shareholders to be taxed as individuals under subchapter S. We are now trying to expand that out to 150 shareholders. This is a very important provision for small banks.

Let me review briefly the two major issues of contention in the bill. Operating subs versus affiliates; Chairman Greenspan and all former living Chairmen of the Federal Reserve Board and most former Secretaries of the Treasury have argued that it is unwise and dangerous to let banks provide these broad financial services within the structure of the bank itself; that they should be required to separate securities, separate insurance, separate these other industries from the capital of the bank itself because the bank is insured by the American taxpayer. So the first argument is a safety and soundness argument. The second argument is that the implicit subsidies to banks will give them an unfair advantage in providing these services if they are allowed to do them within the bank.

I just want to read a couple of quotes from Alan Greenspan. This is Alan Greenspan in his April 28 testimony before the House Commerce Committee. ''I and my colleagues''—and by ''colleagues'' he means every member of the Board of Governors of the Federal Reserve Board. I want to remind our colleagues, meaning Senators, that most of those members of the Federal Reserve Board were appointed by Bill Clinton, by this President. Chairman Greenspan said:

> I and my colleagues accordingly are firmly of the view that the long-term stability of U.S. financial markets and the interest of the American taxpayer would be better served by no financial services modernization bill, rather than one that allows the proposed new activities to be conducted by the bank as proposed in H.R. 10.

And I would say in the Sarbanes-Daschle substitute.

In other words, every member of the Board of Governors of the Federal Reserve Board says that for the safety of the taxpayer in FDIC insurance, and for the general competitiveness of the economy, if we had a choice between letting banks provide these broad services within the bank or having no bill at all, they unanimously would prefer having no bill rather than doing it the wrong way, as they concluded.

Greenspan goes on to say that allowing these services to be provided within the bank ''leads to greater risks for the deposit insurance funds and for the taxpayer.''

Secondly, John Dingell, long-time chairman of the House Commerce Committee and, in the minds of many, the most influential Democrat in the House of Representatives, has said that, ''absent significant changes in H.R. 10''—that is, the House bill, and the same provisions are in the Sarbanes substitute—''that I will be compelled to oppose this bill with every bit of strength I have.''

So this is a very important issue and an issue which we will vote on as part of the general substitute that will be voted on first, and then perhaps we will vote on again.

Let me turn to a discussion of CRA. Most people think of the Community Reinvestment Act as being a very small program. And it was a very small program until 1992.

In 1977, Senator Proxmire put a little provision in a housing bill that nominally required banks to make loans in the communities where they collected deposits. A North Carolina Democrat objected to the provision. There was a vote to strip it out of the bill, and the vote failed on a 7–7 tie. This so-called CRA provision went on to become the law of the country and became far more important than the bill to which it was attached.

Prior to 1992, if you added up all the CRA agreements and all the bank capital allocated by the CRA requirements, these provisions had allocated only about $42 billion worth of capital.

Today, 6 years later, CRA is allocating $694 billion in 1 year. That is loans, that is commitments to lend, and that is hard cash payments. To put this in perspective, that is bigger than the gross domestic product of Canada. It is bigger than the combined assets of General Motors, Ford, and Chrysler. It is bigger than the total discretionary Federal budget of the U.S. Government.

Especially troubling is the $9 billion of cash payments which have been made as part of CRA agreements.

In 1977, nobody ever contemplated that under a requirement of law which required banks to meet credit needs of the communities where they collected deposits that someday banks would pay out and commit $9 billion of cash payments as part of this process.

Let me explain these cash payments: As part of every CRA agreement we have been able to obtain, there is a requirement that the banks pay cash to individual protesters and protest groups, in return for which they generally sign an agreement that they will withdraw their objection to the banks taking the activity which they objected to.

Our provisions relating to CRA are very simple. Let me begin with the integrity provision.

Under current law—or under current practice, because the law is a very general law—it is possible for a protest group, say, in Boston to protest a bank merger in Illinois and, in essence, not go away until its ''expenses'' in a cash payment to it are made.

It has now become fairly common for protest groups from one State or region to protest bank actions in another State or region, entering into the process to file a complaint or to threaten a complaint. But often official complaints are not filed. You are going to hear figures about there being complaints in only 1 percent of the bank applications. Remember, most applications are only to close or open a branch. The big applications are merger applications, and one of the reasons we have had an explosion in CRA and the cash payments in the last 6 years is from these mergers.

None of these agreements is public—every agreement we have seen, and we now have three that I have read, and we are getting more every day—every one of them requires the bank to keep the agreement private, so no one knows what percentage of the face value of the loan goes to the community group in a cash payment. No one knows how much in direct payments occurs. No one knows how much the community group collects in classes, say, that it makes the borrowers go to and then pay it cash money.

But basically our first amendment tries to deal with the following problem: The last-minute protest, or where the protester does not file with the Comptroller of the Currency but simply goes to the bank in question and says, ''Look, I'm going to file this complaint. Here is a letter that I'm going to send to the Comptroller of the Currency calling you a racist and calling you a loan shark. And these are the protests that I'm going to hold in these various locations. And I wanted to see, before I did all this stuff, if you were willing to 'comply' with the law.''

Basically what is happening in these cases is, there is immense pressure on the bank to make a cash payment or to enter into some kind of agreement in order to be able to move forward on their merger.

Here is what our amendment says. If a bank has been in compliance with CRA—the bank has been evaluated by any of the Federal regulators who have jurisdiction to come to the bank, evaluate it, review its records, and determine that it is complying with CRA—if the bank has complied 3 years in a row, and if it is currently in compliance, then a protester is not precluded from protesting. You are going to hear some people say this is a safe harbor. It is not a safe harbor. Legally, it is a rebuttable presumption. The bank is assumed to be in compliance if it has been in compliance three times in a row and is deemed by its regulators in compliance now, unless the protester or protest group can present substantial evidence of noncompliance.

Now, what does ''substantial evidence'' mean and where does the term come from? Substantial evidence is referenced 900 times in the United States Code. It is probably the best defined legal term in the American system of jurisprudence. There have been 400 major cases defining what substantial evidence means.

Title 5 of the United States Code relating to administrative law—that is, how agencies function—already requires that agency action be based upon substantial evidence, not on arbitrary or capricious action. So the reality is, it is already the law that bank regulators should be using this standard right now for evaluating CRA. In fact, all banking laws and procedures and the judicial review of all banking laws and all banking procedures use one standard—substantial evidence.

Now, what does substantial evidence mean? I have a good counsel, and she has gone back and researched all these 900 laws and all of these court rulings. Here is what substantial evidence means. In order for a protester to stop a bank merger or have its protest become a formal part of the consideration for a bank application, the protester must present substantial evidence that the bank is either not in compliance or won't be in compliance after its action.

Now, what does substantial evidence mean? It means ''more than a mere scintilla.'' In other words, you have a bank that is engaged in a transaction where it could literally lose $100 million a day by being unable to consummate its agreement, and the standard that we require for you as an individual to come in and throw a rock in the gear and potentially stop this whole process is that you have to present more than a mere scintilla of evidence that this bank, with a long history of compliance, where the regulators say it is in compliance right now, all you have to do is present more than a mere scintilla of evidence that in fact the bank is not in compliance.

Now, what is onerous about that? In fact, should we have a procedure in a free society where professional protesters, without presenting a mere scintilla of evidence, can literally hold up institutions and potentially impose hundreds of millions of dollars of costs on them and their customers without presenting a scintilla of evidence? Who could be against that proposal?

A second definition defined in case law and in statute is, such relevant evidence as a reasonable mind might—it doesn't say ''has to''—accept as adequate to support a claim; real, material, not seeming or imaginary; considerable in amount, value, and worth.

So I ask my colleagues and anybody who might be interested in this debate, is it unreasonable for a bank which has historically been in compliance with the CRA law, has been meeting the requirements as judged by the regulators who have responsibility for judging, having been in compliance 3 years in a row, being in compliance now, if somebody wants to come in and prevent them from doing things which the regulator has already judged in their last evaluation that at least as of that point they were in compliance with the law to allow them to do that, is it unreasonable to ask that they present at least one scintilla of evidence, that they present evidence that a reasonable mind might accept as adequate to support a claim, that their evidence be real, material and not seeming or imaginary, or that it be considerable in amount, value, and worth? How could anyone think that standard is too high?

The second issue related to CRA has to do with small banks. Small banks in rural areas have a very small percentage of the capital that is available in the American banking system—about 2.7 percent. But I think of greater importance is the following figure, and I think it proves one thing conclusively: Small banks in communities that are outside metropolitan areas—that is, generally don't even have a city much less an inner city—are doing an excellent job of serving their communities.

Since 1990, there have been 16,380 CRA exams on small, rural banks. Many of the small bankers from all over America who have written the Banking Committee have estimated that CRA compliance costs them about $60- to $80,000 a year. They have to name a CRA compliance officer. Many of these banks have between 6 and 10 employees. By the time they do all the paperwork and comply with all of the regulations, by the time they name a CRA compliance officer—normally that is the president of the bank—they are having to pay between $60- and $80,000 a year to comply. Sixteen thousand, three hundred and eighty of them have been examined for CRA compliance since 1990, and only three small rural banks and S&Ls have been deemed to be out of compliance. That is, 3/100 of 1 percent of the evaluations have turned up just three small banks and small S&Ls in rural areas that are out of compliance.

In return for having turned up 3 supposed bad actors, you have had 16,380 evaluations, 40 percent of the entire enforcement mechanism for CRA. What I do not understand is why CRA advocates don't want to take that enforcement and put it where the money is, in the urban areas and in the big banks.

I have numerous letters—and I will read some of them—from small bankers, several of whom have been Federal regulators enforcing these very laws in the past, outlining how hard it is for them to comply with these regulations and that they are already lending to everybody in town just to stay in business. These are very small communities, and they have a very small lending base.

Now, I have spent a lot of time going through these issues, but I think they are important issues. I look forward to debating this issue. I hope we can pass a good bill. I agree with Alan Greenspan and I agree with every one of the Board of Governors of the Federal Reserve Board, however, on one point: It is better to have no bill than to have a bad bill.

I want a bill that is going to promote competition, not reduce it. I want a bill that is going to reduce regulation and redtape and cost, not increase it. I want a bill that is going to expand financial services, not reduce them. I want a bill that is going to lower the costs of financial services, not increase them. I believe we have such a bill before the Senate.

I hope my colleagues will listen very carefully to the debate. I hope they will enter it with open, not necessarily empty, minds. I think if they listen to the two major issues we are going to debate—and those issues are: Should banks provide these expanded services within a bank, or should they have to provide it outside the bank structure?—and as they listen to the issue about whether or not we want integrity and relevance in CRA, which has become, now, the largest program undertaken by the Federal Government, if measured against direct government spending.

It seems to me that the conclusions they will reach are obvious, and in reaching those conclusions we will have the additional benefit of passing a bill that will expand financial services and reduce costs. I thank my colleagues for their patience.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland.

Mr. SARBANES. Mr. President, for the fourth time in 11 years, the Senate is debating legislation to modernize the structure of the financial services industry. We are addressing this issue because we want our financial services statutes to keep pace with forces that are changing the financial marketplace, forces such as globalization, technological change, and the development of new products.

Many experts agree that the time has come to allow affiliations between banks, securities firms, and insurance companies; in other words, those actors within the financial services industry that heretofore have been kept separate by existing statutes—although those statutes have, to some extent, been eroded either by regulatory decisions or by court decisions. It is, therefore, felt that financial services modernization legislation would be useful in helping to set the structure within which financial institutions are to operate, to provide a certainty and a stability that is now missing under the existing arrangements, and which is not altogether clear along the borderline of what activities are permitted and what activities are not permitted.

Now, we have not only no objection, we are supportive of the effort to allow these affiliations to take place within the financial services industry. Therefore, we are anxious to obtain the enactment of financial services modernization legislation. However, it is important, in the course of doing that, that we achieve or preserve certain important goals: obviously, the safety and soundness of the financial system; the continuing access to credit for all communities in our country; protecting consumers, who, after all, are Mr. and Mrs. America. We are concerned that in this effort to create a new structure we don't lose sight of the very specific problems that relate to the ordinary American with respect to credit; and finally, maintaining the separation of banking and commerce. There are some who would like to cross that line as well, but we think that would be a great mistake to do that.

Now, just a little bit of history here. Last year, every Democratic member of the Senate Banking Committee voted for financial services modernization in the form of what was then referred to as H.R. 10, the Financial Services Act of 1998. That bill was reported by the Senate Banking Committee on a bipartisan vote of 16–2. So there was a joint bipartisan effort last year, to try to obtain enactment of financial services modernization legislation, which didn't prove out—unfortunately, in my view.

Now, this year, unfortunately, the bill brought out of the Committee was on a vote of 11–9, a straight party vote, which I regret. I particularly regret that, since last year we were able to bring a bill out on a 16–2 vote, which, in effect, was a very strong bipartisan statement. That obviously raises the question: Why this dramatic change from last year to this year? I think, very simply, it is because the bill brought to the Senate now, S. 900, does not meet the important goals that I set out earlier of continuing access to credit for all communities in our country, protecting consumers, and maintaining the separation of banking and commerce.

Before this year, the efforts of the Banking Committee to modernize financial services,—in other words, taking earlier efforts to which I referred, in which we moved legislation out and, on occasion, even moved it through the Senate, but weren't able to get it passed in the House—those efforts were, in each instance, bipartisan efforts. We reported legislation with support from both sides of the aisle. That effort, of course, earlier on, and certainly last year, reflected compromises among Committee members and among industry groups on a wide range of issues and, in fact, last year's bill was not opposed by a single major financial services industry association.

Now, this year, the consensus so carefully developed last year has been abandoned. That decision, of course, has made this bill a controversial one and has led to opposition to it. As I indicated, all of the Members on this side of the aisle in the Committee opposed the Committee bill. Some financial industry groups oppose aspects of the Committee bill. Civil rights groups, community groups, consumer organizations, and local government officials also strongly oppose the Committee bill, especially with respect to the Community Reinvestment Act provision, which is an extremely important issue, as Members are well aware.

Lastly, let me note, because it is highly relevant to the process in which we find ourselves, that the White House—the President himself—strongly opposes this legislation. The President sent a letter to the Committee at the time of the markup, saying:

> This administration has been a strong proponent of financial legislation that would reduce costs and increase access to financial services for consumers, businesses and communities. Nevertheless, we cannot support the Financial Services Modernization Act of 1999, as currently proposed by Chairman GRAMM, now pending before the Senate Banking Committee.

They then go on to indicate their difficulties with the Community Reinvestment Act provisions, noting that:

> It is a law that has helped to build homes, create jobs and restore hopes in communities across America.

They reference that:

> The bill would deny financial services firms the freedom to organize themselves in the way that best serves their customers, prohibits a structure with proven advantages for safety and soundness, which is the op-sub affiliate issue.
>
> The bill would provide inadequate consumer protections and, finally, the bill could expand the ability of depository institutions and non-financial firms to affiliate at a time when experience around the world suggests the need for caution in this area.

The President concludes that letter by saying:

> I agree that reform of the laws governing our Nation's financial services industry would promote the public interest. However, I will veto the financial services modernization act if it is presented to me in its current form.

I ask unanimous consent that the President's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

(See Exhibit 1.)

Mr. SARBANES. Mr. President, the administration has also just submitted a Statement of Administration Policy, which starts out:

> The Administration strongly opposes S. 900, which would revise laws governing the financial services industry. This Administration has been a strong proponent of financial modernization legislation that would best serve the interests of consumers, businesses, and communities, while protecting the safety and soundness of our financial system. Consequently, it supports the bill's repeal of the Glass-Steagall Act's prohibition on banks affiliating with securities firms and of the Bank Holding Company Act's prohibitions on insurance underwriting. Nevertheless, because of crucial flaws in the bill, the President has stated that, if the bill were presented to him in its current form, he would veto it.

And then it enumerates their concerns with the bill, most of which repeat the points made in the President's letter to the Committee of March 2.

Mr. President, I ask unanimous consent that this Statement of Administration Policy be printed in the RECORD at the conclusion of my remarks, and following the letter from the President to the Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. SARBANES. Mr. President, my colleague from Texas, the chairman of the Committee, indicated in his remarks that he had doubts about the administration's seriousness about the bill. I don't quite know where those doubts come from. But let me simply say that I don't think they could be more serious about it than they have indicated, and I know the very strong feeling that the Secretary of Treasury and indeed the President hold on a number of these issues that we are debating here and seeking to try to resolve on the floor of the U.S. Senate.

We have this situation where it is clear that unless these concerns enumerated and expressed by the President are resolved in a favorable way we are heading down a path towards a veto. That doesn't seem to me to be the most constructive or productive path on which to proceed in terms of trying to enact legislation.

The Democratic Members of the Banking Committee have joined with Senator DASCHLE in introducing Senate bill 753, the Financial Services Act of 1999. That bill largely encompasses the compromises that were developed last year in the bipartisan legislation.

It differs in one important respect, and that is with respect to the bank operating subsidiary provisions. I will discuss those in a little more detail shortly. But that alternative which reflects essentially last year's bipartisan agreement will be offered as an amendment in a the nature of a substitute to S. 900.

That in fact will be the first amendment that will be offered. And obviously we expect to do that at the conclusion of opening statements when Members have had an opportunity to make their opening statements. We expect them to go to the alternative, and we will discuss it obviously in some detail. It is I think a very important proposal.

If in fact the alternative were substituted for the bill we would be well on the way to getting legislation enacted into law, because it would remove the veto threat at the end of this path and would in effect put the Senate essentially in the same ballpark, although not exactly, with where the House Banking Committee was when it reported out, on a vote of 51 to 8, a bipartisan piece of legislation.

It is quite true that bill now has to go through the House Commerce Committee because of the division of jurisdiction on the House side, and presumably differences between how the House Commerce Committee sees issues and how the House Banking Committee has seen them will have to be resolved on the floor of the House of Representatives.

But at this stage, the first step, what the House Banking Committee has done—I underscore score again on a very strong 51 to 8 vote, an overwhelming bipartisan endorsement—parallels, is very similar, to what is contained in the alternative that we will be offering as an amendment as a substitute for the bill that is now before us.

Let me turn to the bill that is now before us with special emphasis on its differences from the Committee reported bill last year with the 16 to 2 vote that we had in the Committee.

It is important I think to try to develop a consensus on these issues. The Committee in the past has essentially worked in a nonpartisan way. We have divisions within the Committee but they have not usually been on a straight party basis.

I share the regret expressed by the chairman that we have not been able to work this matter out this year in a way to avoid these sharp party differences. But the failure to do so relates back directly to these very critical issues that are at stake. These were issues on which last year we were able to work out accommodations and in fact the provisions we are advancing in the substitute are last year's agreed-upon provisions, the consensus provisions from last year with the one exception of the operating sub-affiliate issue which I will address shortly.

Clearly one obvious and extremely important problem with S. 900, the bill now before us, brought out by the Committee is the treatment of the Community Reinvestment Act, or CRA. The agreement that we have reached in terms of the order of procedure provide that an amendment specifically directed to CRA will be in order as fourth in the line.

We set out this order just for the first four amendments in an effort to structure at least the outset of the consideration of this very important legislation.

I share the chairman's perception that this is very important legislation. It is an issue we have wrestled with for many years. It pertains to the workings of our financial services industry, which in turn, of course, pertains to the workings of our economy and our position in the international economic scene. These are important matters to which we are addressing ourselves.

I echo the chairman's hope that Members will pay close attention. I assume that Members will pay close attention, and that they will come to it with an open mind as they weigh the various considerations that are before us.

Let me turn to the CRA provisions.

Let me first say that the Community Reinvestment Act, in the judgment of most objective observers, has played a critical role in expanding access to credit and investment in low- and moderate-income communities. We think it has been of critical importance in providing access to credit, which very frankly is, in today's context when we talk about civil rights in terms of economic opportunity, a very important aspect of civil rights.

In 1977, the CRA was enacted to encourage banks and thrifts to serve the credit needs of their entire communities. Consistent with safe and sound banking practices, banks and thrifts must serve not just upper-income areas but low- and moderate-income neighborhoods, as well. CRA reflect the view that banks and thrifts receive public benefits such as deposit insurance, access to the Federal Reserve discount window and the Federal Reserve payment system, that they draw deposits out of these communities and that they have a responsibility to make loans into the communities in order to serve the entire community.

In fact, the loan-to-deposit ratio is often an important standard to measure the extent to which the institutions drawing deposits out of the community are providing a flow of credit back into those communities.

Now, my colleague, the chairman of the Committee, has talked about these very large amounts of money that have been committed for community reinvestment purposes. First of all, let me say those figures are grossly overstated. The figures cited reflect commitments made by financial institutions projected 10 years into the future. They are not the commitments for 1 year. He is upset by the size of them. I wish they were for 1 year. I am not upset by the size of them. I would like to see these kind of commitments made into reinvesting in our communities. In any event, in order to get this debate on an apples and apples basis, I think it is very important to understand that the figures that were being tossed around by the chairman reflect commitments made by the institutions over an extended period of time and not what is going to take place this year.

CRA has significantly improved the availability of credit in historically underserved communities. There are any number of success stories. Obviously, we will address those when we turn to the specific CRA amendment. Let me just simply point out that CRA has been credited with a dramatic increase in homeownership by low- and moderate-income individuals. Between 1993 and 1997, private sector home mortgage lending and low- and moderate-income census tracks increased by 45 percent. CRA has helped spur community economic development. The number of loans for small business in low- and moderate-income areas has increased substantially.

Now, the chairman says there has been this sharp increase in the amount of commitments. That is true, but there has been a very sharp increase in the amount of mergers and acquisitions which helped to trigger the CRA process. There has been a more receptive attitude toward CRA on the part of the regulatory agencies. In fact, regulatory agencies, community groups, local and State elected officials and many bankers agree that CRA has been beneficial. Chairman Greenspan specified that ''CRA has very significantly increased the amount of credit in communities,'' that the changes have been ''quite profound.''

The U.S. Conference of Mayors has promoted CRA as an essential tool in revitalizing cities, while the National League of Cities has listed CRA preservation as a major Federal priority for 1999.

Bankers have been able to work with CRA, made it very effective and developed new relationships with their communities. As a consequence, the chairman and CEO of BankAmerica, Hugh McColl, stated earlier this year,

> My company supports the Community Reinvestment Act in spirit and in fact. To be candid, we have gone way beyond its requirements.

CRA has accomplished these goals by encouraging banks and thrifts to make profitable market rate loans and investments. Chairman Greenspan noted last year that there is no evidence that banks' safety and soundness have been compromised by low- and moderate-income lending and bankers often report sound business opportunities. In fact, the CRA legislation requires that these loans are made consistent with safety and soundness criteria.

My colleague suggests that somehow the CRA was put into law sort of unbeknownst to everyone, that the only vote was a 7–7 vote in Committee on an amendment to take the provision out of a bill that had been laid out for markup. When that bill came to the floor an amendment was proposed to strike the CRA title of the bill. That amendment was defeated on a vote of 31 in favor and 40 against.

For whatever it is worth, I simply want to put down this notion that somehow this matter wasn't considered at the time it was first put into law in the Senate. It was considered in the Committee and it was considered on the floor of the Senate. It was voted on in both places and it remained in the law. That is the provision that we now have with some subsequent modifications.

In the mid-1990s an effort was made to revise the CRA regulations and deal with the complaint that was being received from a number of financial institutions that the regulatory process was overly burdensome. Secretary Rubin actually took the lead in doing that. I think he did a very successful job, in effect trimming down CRA requirements, in order to ease that burden. In fact, at the time his work was received with great approval.

Let me talk very quickly about the defects that are in the bill with respect to CRA. As I said, we had good agreement on this last year. This year, unfortunately, we really have had a major conflict over this extremely important issue.

The chairman makes a number of assertions about CRA but we have never held any hearings to substantiate those assertions. We are constantly being told about how extensive the abuse is. I am prepared to consider the possibility that on occasion abuses occur, but I think the ones that took place and most of the ones talked about took place in the early years of the CRA and that, by and large, now the CRA process is working quite well.

I know that doesn't meet my colleagues concern. I'm a little bit reminded of the story of the program that was working well in practice, but the objection was raised, Is it working well in theory? As I listen to this debate, I'm reminded of that story.

Let me talk about the provisions in the bill as it differed from last year's approach. The bill eliminates the need to have a ''satisfactory'' CRA rating as a precondition of expanded affiliations. In other words, the substitute we will offer will provide that if a bank wants to go into securities or into insurance, that the bank must have a ''satisfactory'' CRA rating. In other words, a bank that has an unsatisfactory performance rating would not be able to move into those activities. It is asserted that that is a major expansion of CRA. The major expansion is the ability of the banks to go into those activities which heretofore they have been precluded from. That is the expansion.

Our position is if that is going to take place, a CRA screening with respect to the bank's performance—not to the securities or insurance affiliate, the bank's performance—is a perfectly reasonable requirement to expanding the activities. Otherwise, this bill is not neutral. I mean, it allows the banks in effect to shift assets out. If they do not have the requirement of a ''satisfactory'' CRA rating, you would dramatically undermine CRA as it now exists. In fact, Secretary Rubin stated:

> If we wish to preserve the relevance of CRA at a time when the relative importance of bank mergers may decline and the establishment of non-bank financial services will become increasingly important, the authority to engage in newly authorized activities should be connected to a satisfactory CRA performance.

The financial institutions are prepared, willing, to live with this requirement. They are not clamoring that it be dropped from the legislative package. In fact, they were supportive of it last year and accepting of it this year.

Second, and I am touching on them very quickly because I know there are other Members wishing to make an opening statement.

Mr. WELLSTONE. Mr. President, might I just interrupt my colleague and ask a question?

Mr. SARBANES. Surely.

Mr. WELLSTONE. I am a little uneasy he is being rushed along. My understanding is at 12:15 we were going to go into morning business; is that correct?

The PRESIDING OFFICER. There is not an order to that effect.

Mr. WELLSTONE. There is or is not?

The PRESIDING OFFICER. There is not.

Mr. WELLSTONE. I say to my colleague I did not want him to rush. I will come after the caucuses and speak.

Mr. SARBANES. As I understand it, there are a number of people who want to make opening statements. Presumably we would complete opening statements after lunch if we have not completed them before lunch.

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. GRAMM. Mr. President, let me just ask our colleague how long he needs after lunch to speak?

Mr. WELLSTONE. I have a fairly lengthy statement because I am probably one of the few Senators who objects to this bill and I want to lay out my case. I want to talk strongly in the positive about some of what Senator SARBANES is presenting. So I think probably about 40 minutes, I would need.

Mr. GRAMM. Let me say I do not object. I think we should go back and forth. So if we have a Republican who would like to speak after Senator SARBANES, we can do that. If the Senator wants, he can have 40 minutes or an hour and 40 minutes. We would like to hear it.

Mr. WELLSTONE. If I could just do this, because I do not want my colleague from Maryland rushing along and there are other colleagues out here: I ask unanimous consent I be allowed to speak this afternoon before we get to amendments?

Mr. SARBANES. You don't have any objection to that?

Mr. GRAMM. Sure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the chair.

Mr. SARBANES. Second, Mr. President, is the provision for a safe harbor for banks with a ''satisfactory'' CRA rating. Actually, what this provision would do is effectively eliminate public comment on CRA performance. Banks that had received a ''satisfactory'' or better rating at the recent exam, and during the preceding 3 years, would be deemed to be in compliance with CRA and immune from public comments on CRA performance. That would be the case unless you had substantial, verifiable information to the contrary—which of course is a very heavy burden of proof.

Actually the regulators oppose this. Comptroller of the Currency Hawke stated:

> Public comment is extremely valuable in providing relevant information to an agency in its evaluation of an application under the CRA, convenience and needs and other applicable standards—even by an institution that has a ''satisfactory'' CRA rating. This amendment would limit or reduce public comment that is useful in our application process.

And there is a similar comment from Ellen Seidman, the Director of the Office of Thrift Supervision.

Public comment is useful because many banks or regulators sample only a portion of the markets to determine the institution's CRA rating. Public comment provides an opportunity for community members to point out facts and data that have been overlooked in a particular examination.

Actually, 97 percent of the institutions get a ''satisfactory'' rating so you, in effect, are going to exclude out from this CRA review most of the institutions.

None of the statistics support these assertions that there are too many challenges, that there is too much delay. In fact the percentages are quite small, in terms of the number of challenges that are filed, and then the number of instances in which the challenge gains any recognition from the regulators.

The regulators, of course hear all of the comments. Individuals seeking to comment on other aspects of the bank's performance—financial and managerial resources, or competitive implications—are not going to have their rights similarly curtailed. We do not think the rights on CRA should be so curtailed. We will develop this, of course, later in the debate.

Let me now turn very quickly to the small bank exemption. The exemption for the rural institutions would exempt a vast number of institutions in underserved rural areas. It is asserted that these banks by their very nature serve their communities. But small banks have historically received the lowest CRA ratings. In fact, FDIC statistics show that 57 percent of small banks and thrifts have loan-to-deposit ratio below 70 percent, with 17 percent of those having levels below 50 percent.

The Madison, Wisconsin Capital Times, in an editorial, summed up this practice in many rural communities as follows:

[M]any rural banks establish a very different pattern [than reinvesting in their communities], where local lending takes a lower priority than making more assured investments, like federal government securities. Thus, such banks drain local resources of the very localities that support them, making it much harder for local citizens to get credit.

We revised the regulations, I think in a very effective way, to slim them down in terms of the burden on the small banks. We don't think an exemption is necessary to relieve the regulatory burden. They now have a streamlined examination process. They generally do not need to keep paperwork or records beyond what they would do in the ordinary course of business.

OTS Director Ellen Seidman stated:

Small banks should be subject to CRA. The simple assumption that if an institution is small it must be serving its community is not entirely correct.

Let me turn very quickly to the banking and commerce issue. Again, that is an area in which there is a difference between what was worked out last year and the bill that has been brought to the floor this year.

A wide range of commentators including, interestingly enough on this issue, Chairman Greenspan and Secretary Rubin, former Federal Reserve Chairman Paul Volcker, banking industry associations and public interest groups, support retaining the separation of banking and commerce.

Chairman Greenspan said:

It seems to us wise to move first toward the integration of banking, insurance and securities and employ the lessons we learn from that important step before we consider whether and under what conditions it would be desirable to move to the second stage of the full integration of commerce and banking.

And Secretary Rubin stated, ''We continue to oppose any efforts to expand the integration of banking and commerce.''

The Committee bill permits the continued existence of what is called a unitary thrift loophole; and, therefore, it permits a major breaching of the separation between banking and commerce.

The American Bankers Association and the Independent Community Bankers of America have written to the Senate urging us to support the Johnson amendment on unitary thrifts that would prohibit existing unitary thrift holding companies to sell themselves to commercial firms going forward. I think it is very important that we try to check this loophole which continues to exist in the law.

I simply say to the chairman that I share his view that we ought not to cross any line that is violative of the Constitution. We do not think this provision is violative of the Constitution. We think there is a lot of very good case law that would support that position.

In addition to the unitary thrift loophole, the Committee-reported bill—and I will just touch on these—allows unnecessary, open-ended merchant banking investments. It permits holding companies to engage in any nonfinancial activities that regulators believe are ''complimentary'' to financial activities, which is, of course, a potentially very large stretch of these activities.

Former Federal Reserve Chairman Paul Volcker gave very strong testimony on this very issue. And careful observers of the issue have said that they regard the failure to maintain this distinction between banking and commerce, which we have had in our law for a very long period of time, as one of the reasons that contributed to the Asian financial crisis.

Economist Henry Kaufman warned us. He said that it would lead to conflicts of interest and unfair competition in the allocation of credit. He said:

A large corporation that controls a big bank would use the bank for extending credit to those who can benefit the whole organization. . . . The bank would be inclined to withhold credit from those who are, or could be, competitors to the parent corporation. Thus, the cornerstone of effective banking, independent credit decisions based on objective evaluation of creditworthiness, would be undermined.

And Paul Volcker, in commenting about the Asian financial crisis has written:

Recent experience with the banking crises in countries as different in their stages of development as Japan, Indonesia and Russia demonstrates the folly of permitting industrial-financial conglomerates to dominate financial markets and potentially larger areas of the economy.

Now, let me turn very quickly to some consumer protection issues which we think will be more adequately covered in our alternative than in the Committee bill.

The alternative, which reflects last year's bipartisan agreement, provides mechanisms for regulators to receive and address consumer complaints. It provides that Federal regulations that provide a greater protection for consumers would apply rather than weaker State regulations. It provides that the securities activities of banks would be more closely checked on the broker-dealer question and with respect to mutual fund investors.

The Committee bill extends the assessment differential on the special deposit insurance assessment paid by thrifts. We do not do that in our alternative.

Let me turn quickly to the operating subsidiary issue. This is one area where we do differ from last year's joint bipartisan bill. We were much impressed by the fact that the Treasury Department agreed to significant additional safeguards regarding the scope and regulation of bank subsidiary activities. Therefore, we thought it now reasonable to permit activities to take place in an operating subsidiary with the safeguards the Treasury came forward with.

First, that insurance underwriting may not take place in a bank's subsidiary; secondly, that the Federal Reserve shall have exclusive authority to define merchant banking activities in bank subsidiaries; thirdly, that the Treasury agrees that the Secretary and the Federal Reserve shall jointly determine which activities are financial in nature, both for a holding company and for a bank subsidiary, and that they shall jointly issue regulations and interpretations under the financial-in-nature standard.

So we think that these changes on the part of the Treasury—including the requirement that every dollar of a bank's investment in a subsidiary would be deducted from the bank's capital for regulatory purposes, that a bank could not invest in a subsidiary in an amount the bank could not pay its holding company as a dividend, and the strict limits which now apply to transactions between a bank and its affiliates would apply to transactions between banks and their subsidiaries—we think this will level the playing field, eliminate any economic benefit, and provide for safety and soundness.

So we take the view now, on the basis of this agreement that the Treasury has made, that permitting bank operating subsidiaries can be consistent with the goals of preserving safety and soundness, protecting consumers, and promoting comparable regulation.

I ask unanimous consent that an article entitled ''Ex-FDIC Chiefs Unanimously Favor the Op-Sub Structure'' be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit No. 3.)

Mr. SARBANES. In conclusion, let me simply state, Mr. President, that on this side of the aisle we are very much committed to trying to get financial services modernization legislation. All of us supported it last year. In the Committee again this year we supported legislation which would accomplish that purpose. We do not believe that the bill brought forward by the Committee meets the very important goals which I outlined at the outset.

I think the legislation introduced by Senator DASCHLE, and joined in by us, is a balanced, prudent approach to financial services modernization. It reflects last year's carefully struck bipartisan compromises. It is not opposed by any financial services industry actor or player. It is similar to the bill passed, by a broad bipartisan vote, by the House Banking Committee, and it is clearly the approach most likely to achieve the enactment of financial services modernization legislation.

If you want to get legislation, given that at the end of the line it must not only pass the Congress, but be signed by the President, this approach is clearly the one that is most likely to achieve the enactment of financial services modernization legislation.

When the opportunity presents itself, I urge my colleagues to shift off the path that is before us and to move on to that path.

I yield the floor.

EXHIBIT 1

THE WHITE HOUSE,
Washington, March 2, 1999.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC

DEAR PAUL: This Administration has been a strong proponent of financial legislation that would reduce costs and increase access to financial services for consumers, businesses and communities. Nevertheless, we cannot support the ''Financial Services Modernization Act of 1999,'' as currently proposed by Chairman Gramm, now pending before the Senate Banking Committee.

In its current form, the bill would undermine the effectiveness of the Community Reinvestment Act (CRA), a law that has helped to build homes, create jobs, and restore hope in communities across America. The CRA is working, and we must preserve its vitality as we write the financial constitution for the 21st Century. The bill would deny financial services firms the freedom to organize themselves in the Way that best serves their customers, and prohibit a structure with proven advantages for safety and soundness. The bill would also provide inadequate consumer protections. Finally, the bill could expand the ability of depository institutions and nonfinancial firms to affiliate, at a time when experience around the world suggests the need for caution in this area.

I agree that reform of the laws governing our nation's financial services industry would promote the public interest. However, I will veto the Financial Services Modernization Act if it is presented to me in its current form.

Sincerely,

BILL CLINTON.

EXHIBIT 2

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, May 3, 1999.

STATEMENT OF ADMINISTRATION POLICY

S. 900—FINANCIAL SERVICES MODERNIZATION ACT OF 1999 (GRAMM (R) TX)

The Administration strongly opposes S. 900, which would revise laws governing the financial services industry. This Administration has been a strong proponent of financial modernization legislation that would best serve the interests of consumers, businesses, and communities, while protecting the safety and soundness of our financial system. Consequently, it supports the bill's repeal of the Glass-Steagall Act's prohibition on banks affiliating with securities firms and of the Bank Holding Company Act's prohibitions on insurance underwriting. *Nevertheless, because of crucial flaws in the bill, the President has stated that, if the bill were presented to him in its current form, he would veto it.*

In its current form, the bill would undermine the effectiveness of the Community Reinvestment Act (CRA), a law that has helped to build homes and create jobs by encouraging banks to serve creditworthy borrowers throughout the communities they serve. The bill fails to require that banks seeking to conduct new financial activities achieve and maintain a satisfactory CRA record. In addition, the bill's ''safe harbor'' provision would amend current law to effectively shield financial institutions from public comment on banking applications that they file with Federal regulators. The CRA exemption for banks with less than $100 million in assets would repeal CRA for approximately 4,000 banks and thrifts that banking agency rules already exempt from CRA paperwork reporting burdens. In all, these limitations constitute an assault upon CRA and are unacceptable.

The bill would unjustifiably deny financial services firms holding 99 percent of national bank assets the choice of conducting new financial activities through subsidiaries, forcing them to conduct those activities exclusively through bank holding company affiliates. Thus the bill largely prohibits a structure with proven advantages for safety and soundness, effectively denying many financial services firms the freedom to organize themselves in the way that best serves their customers.

The bill would also inadequately inform and protect consumers under the new system of financial products it authorizes. If Congress is to authorize large, complex organizations to offer a wide range of financial products, then consumers should be guaranteed appropriate disclosures and other protections.

The bill would dramatically expand the ability of depository institutions and nonfinancial firms to affiliate. The Administration has serious concerns about mixing banking and commercial activity under any circumstances, and these concerns are heightened by the financial crises affecting other countries over the past few years.

The Administration also opposes the bill's piecemeal modification of the Federal Home Loan Bank System. The Administration believes that the System must focus more on lending to community banks and less on arbitrage activities and short-term lending that do not advance its public purpose. The Administration opposes any changes to the System that do not include these crucial reforms.

In addition, the Administration opposes granting the Federal Housing Finance Board independent litigation authority. Such authority would be inconsistent with the Attorney General's authority to coordinate and conduct litigation on behalf of the United States.

PAY-AS-YOU-GO SCORING

S. 900 would affect direct spending and receipts. Therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's pay-as-you-go scoring of this bill is under development.

EXHIBIT 3

[From the American Banker, September 2, 1998]

EX-FDIC CHIEFS UNANIMOUSLY FAVOR THE OP-SUB STRUCTURE

(By Ricki Tigert Helfer, William M. Isaac, and L. William Seidman)

The debate on banks conducting financial activities through operating subsidiaries has been portrayed as a battle between the Treasury and the Federal Reserve. The Treasury believes banks should be permitted to conduct expanded activities through direct subsidiaries. The Fed wants these activities to be conducted only through holding company affiliates.

Curiously, the concerns of the Federal Deposit Insurance Corp. have been largely ignored. The FDIC, alone among the agencies, has no ''turf'' at stake in this issue, as its supervisory reach extends to any affiliate of a bank. The FDIC's sole motivation is to safeguard the nation's banks against systemic risks.

In the early 1980s, when one of us, William Isaac, became the first FDIC chairman to testify on this subject, he was responding to a financial modernization proposal to authorize banks to expand their activities through holding company affiliates.

While endorsing the thrust of the bill, he objected to requiring that activities be conducted in the holding company format. Every subsequent FDIC chairman, including the current one, has taken the same position, favoring bank subsidiaries (except Bill Taylor who, due to his untimely death, never expressed his views). Each has had the full backing of the FDIC professional staff on this issue.

The bank holding company is a U.S. invention; no other major country requires this format. It has inherent problems, apart from its inefficiency. For example, there is a built-in conflict of interest between a bank and its parent holding company when financial problems arise. The FDIC is still fighting a lawsuit with creditors of the failed Bank of New England about whether the holding company's directors violated their fiduciary duty by putting cash into the troubled lead bank.

Whether financial activities such as securities and insurance underwriting are in a bank subsidiary or a holding company affiliate, it is important that they be capitalized and funded separately from the bank. If we require this separation, the bank will be exposed to the identical risk of loss whether the company is organized as a bank subsidiary or a holding company affiliate.

The big difference between the two forms of organization comes when the activity is successful, which presumably will be most of the time. If the successful activity is conducted in a subsidiary of the bank, the profits will accrue to the bank.

Should the bank get into difficulty, it will be able to sell the subsidiary to raise funds to shore up the bank's capital. Should the bank fail, the FDIC will own the subsidiary and can reduce its losses by selling the subsidiary.

If the company is instead owned by the bank's parent, the profits of the company will not directly benefit the bank. Should the bank fail, the FDIC will not be entitled to sell the company to reduce its losses.

Requiring that bank-related activities be conducted in holding company affiliates will place insured banks in the worst possible position. They will be exposed to the risk of the affiliates' failure without reaping the benefits of the affiliates' successes.

Three times during the 1980s, the FDIC's warnings to Congress on safety and soundness issues went unheeded, due largely to pressures from special interests.

The FDIC urged in 1980 that deposit insurance not be increased from $40,000 to $100,000 while interest rates were being deregulated.

The FDIC urged in 1983 that money brokers be prohibited from dumping fully insured deposits into weak banks and S&Ls paying the highest interest.

The FDIC urged in 1984 that the S&L insurance fund be merged into the FDIC to allow the cleanup of the S&L problems before they spun out of control.

The failure to heed these warnings-from the agency charged with insuring the soundness of the banking system and covering its losses-cost banks and S&Ls, their customers, and taxpayers many tens of billions of dollars.

Ignoring the FDIC's strongly held views on how bank-related activities should be organized could well lead to history repeating itself. The holding company model is inferior to the bank subsidiary approach and should not be mandated by Congress.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mr. GRAMM. Mr. President, I am going to yield to the Presiding Officer and come up and preside so he can give his opening statement, if he would like to do that. Before doing that, however, I will make a couple of points in response to Senator SARBANES' statement.

First of all, the substitute that Senator SARBANES will offer is not last year's bill. In fact, it is fundamentally different from last year's bill on the most important issue in financial services modernization. That issue is, should the modernization occur within the structure of the bank, or should it occur through the holding company? Last year's bill followed the proposal which has been made and supported by all of the members of the Federal Reserve Board and its Chairman, Alan Greenspan, whereas this bill——

Mr. SARBANES. Will the Senator yield on that point?

Mr. GRAMM. I am happy to yield.

Mr. SARBANES. The Senator isn't suggesting that I didn't lay out in the course of my statement the fact that it differed in this respect from last year's bill, is he?

Mr. GRAMM. No. I am simply making sure that everybody understands—because there were a lot of references made between last year's bill and this year's bill—that how someone voted last year is interesting and may, to some extent, be relevant, but on the fundamental issue that is before us, whether or not these new services should be provided within the bank or outside the bank in holding companies, the substitute which the Senator will offer later today is a very different bill from last year's bill. That is the only point I am making.

The second thing I will make clear is, I didn't object to the growth in CRA and the commitments made to CRA. I did make the point, however, that when in a given year—in fact, last year—the loans, the commitments to lend, the cash payments, and the commitments to pay cash in the future are bigger than the Canadian economy, bigger than the discretionary budget of the Federal Government, perhaps it is time to look at potential abuses.

Now, granted, the Senator made the point that not every loan was made this year, and not every cash payment was made this year. I was simply using the data the way community groups presented it. I was very careful to say that the $694 billion was loans, commitments to lend, cash payments, commitments to pay cash in the future. I stand by those numbers, and those are the numbers of the community service groups.

Mr. SARBANES. Will the Senator yield for a question?

Mr. GRAMM. I am happy to yield.

Mr. SARBANES. Was the Canadian GNP figure the Senator was using a 1-year figure or a 10-year figure?

Mr. GRAMM. It was a 1-year figure.

Mr. SARBANES. I thank the chairman.

Mr. GRAMM. There will be more agreements next year and next year and next year. The point is, this has grown from a very small program into a very big program. I believe, and the majority of the members of the committee believe, it is time to look at this program and look at abuses, and we are going to have plenty of time to debate this later.

Let me also note that, under current law, a bank is not required to get CRA approval to sell insurance. Under current law, there are a limited number of banks that do have some insurance powers. They are not required under current law to get CRA approval to engage in those security powers.

Now, in terms of the CRA reforms in the bill reported by the Banking Committee, those reforms have been endorsed by the American Bankers Association, by the Bankers Roundtable, and by the Independent Bankers Association of America. When our colleague says everybody is happy with the provisions of his substitute, I want people to know that three major banking groups have endorsed the provisions of our bill.

Let me say again—and I don't know what you do to get people to use the English language—there is not a safe harbor in this bill. A safe harbor is where something can't be challenged. There is a rebuttable presumption in the bill. There is a big difference between the two. The rebuttable presumption in the bill simply says that in order to stop or delay a regulatory action, you have to present substantial evidence. That substantial evidence is defined in law as more than a scintilla. It is defined as such relevant evidence as a reasonable person might accept as adequate to support a claim.

That is not a safe harbor. That simply is giving the evaluation that has occurred some standing.

Our colleague talks about comments. Nothing in the bill prevents anybody from commenting on any CRA evaluation. Comments can be made. People can submit any comments. All our provision says is, if a bank has been in compliance for 3 years in a row, if they are currently in compliance in their evaluation with CRA, if the regulator is going to stop the process or delay it, they have to have more than a scintilla of evidence. In order for the protest or objection to be used to stop the process for a bank with a long history of compliance, there has to be substantial evidence. People can comment all they want to comment. Nothing in this provision prevents comments.

Finally—and we will have lots of time to debate these—in terms of unitary thrifts, unitary thrift holding companies are not a loophole. Congress legislated them. We end them in saying that you cannot do any more, but to suggest that they are a loophole, an accident, that nobody ever intended they come into existence, they have existed for over 30 years. We are not debating here whether or not we should stop the issue of new licenses to commercial interests to create ''new unitary thrifts.'' The question is, What do you do with people who already have the charters? Do you change the rules of the game on them?

If our colleagues would indulge me, I yield to Senator ENZI.

Mr. REED. Mr. President, just a point of information, I presume we are going to adjourn at 12:30. Presumptively, that means Senator ENZI would be the last speaker this morning.

The PRESIDING OFFICER (Mr. GRAMM). Let the Chair ask Senator ENZI, could the Senator tell us how long he intends to speak?

Mr. ENZI. Mr. President, I think I have about 7 or 8 minutes' worth and would be willing to stay for Senator REED's comments as well.

Mr. REED. I thank the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise in support of S. 900, the Financial Services Modernization Act of 1999.

I commend the senior Senator from Texas, the chairman of the Banking Committee, Mr. GRAMM, for his leadership on this important measure, a bill that will increase global competitiveness of U.S. financial firms. It will increase access to financial services for all Americans, and it will decrease costs for consumers.

I congratulate Senator GRAMM on his willingness to meet with all of the different groups that have asked to meet with him, the way he has reached out and been willing to talk to people on both sides of the aisle, as well as spend innumerable hours with those of us who have had questions about some of the very detailed technical parts of the bill, particularly the operating subsidiaries, for the research that he has done. I compliment him on the simplification he has done. There were some very complicated issues in last year's bill that, because of the end of the year pressure, were included but weren't very concise. They seemed to be misunderstood by people on both sides of whatever issue. Of course, around here there are more than two sides to every issue.

The chairman sat down with those people and worked out some simplification of language that they say they agree with now. One of the results is, it has reduced a 308-page bill to 150 pages without damaging anything, but it has greatly increased the readability.

We have asked the banking industry and we have asked the agencies to put this in plain language. The chairman has done that and, I think, given people an opportunity to comment on it and discuss it with him in private meetings, if they wanted, as well as in other meetings. It is long overdue that Congress pass legislation that will allow full and open competition at least across the banking, securities and insurance industries.

I believe now is the best time to pass S. 900 in order for U.S. financial intermediaries to be prepared for the challenges of the new millennium. The current laws governing our financial sector have been eroded by the actions of regulators, the decisions of the courts, the continuing changes in technology, and the increasing competitive global markets. In addition, these laws limit competition and innovation, thus imposing unnecessary costs onto the service provider, and that is ultimately additional costs on the consumer.

There are several provisions in this bill I believe are particularly important as several of them are very relevant to small financial institutions.

Section 306 of the bill requires the Federal banking agencies to use plain language in all of their rulemakings used to implement this bill. Since this legislation will impact both large and small financial institutions, this provision will help ensure that small banks will not have to hire several lawyers to interpret the new rules resulting from this legislation.

The bill also requires the GAO to study expanded small bank access to S corporation status, specifically those provisions relating to Senator Allard's bill. I enthusiastically support his efforts to reduce the tax burden on small business corporations.

Additionally, this legislation grants non-metropolitan banks of less than $100 million in assets—very small institutions by any standard—an exemption from the paperwork requirements of the Community Reinvestment Act, or CRA. The total bank and thrifts assets exempt from this requirement would equal only 3 percent. Small, non-metropolitan banks and thrifts by their very nature must be responsive to the needs of the entire communities they serve or they will not remain in business. The exemption in this bill will help reduce the regulatory costs imposed on these smaller institutions. When less time is used to comply with the letter of the law, more time can be devoted to comply with the spirit of the law by better serving the needs of each customer and the entire community.

Title III of the bill also eliminates the Savings Association Insurance Fund (SAIF) special reserve, a top priority of the FDIC. Senator Johnson and I have introduced identical language in a stand alone bill, S. 377, to ensure that the special reserve is abolished. This could save the thrift industry about $1 billion because the funds set aside in the special reserve cannot be used until the SAIF reaches a dangerously low level. Therefore, if unforeseen circumstances impact the SAIF, the FDIC may choose to increase insurance premiums on thrifts to recapitalize the SAIF. The elimination of the special reserve represents a sound public policy that will save the private sector from unnecessary costs.

I strongly support the approach the chairman of the Banking Committee has taken to develop a more streamlined, less burdensome bill. It is only 150 pages. The bill reported out of the Banking Committee last year was 308 pages—double the length of the bill we are debating today. I do not believe more is usually better in terms of the length of a bill. Many times that policy means more hoops and ladders the private sector must go through, thus creating more inefficiencies and higher costs in the marketplace. I believe the bill before us will not hamper industries with unnecessary, congressional-created, burdens and inefficiencies.

Before closing, I want to dispel some of the myths surrounding this legislation—specifically the allegation that the majority in the Banking Committee have abandoned the consensus reached by the Committee last year.

There is no consensus in the substitute bill sponsored by the minority members of the Banking Committee. The House Commerce Committee held a hearing last week on H.R. 10, which is nearly identical to the substitute bill. Members on both sides of the isle were very critical of the bill. Ranking Member DINGELL was especially harsh in his criticism. I mention this to prove there is not consensus on the substitute bill.

Further, this substitute is not the product from last year. It differs in a number of respects from last year's bill, most significantly with regard to the operating subsidiary provisions. The op-sub provisions in the House bill and the minority's bill are those that are causing significant heartburn for the House Commerce Committee and Federal Reserve Chairman Alan Greenspan.

In addition, I want to set the record straight about the vote on the old H.R. 10 in Banking Committee last year. The bill did pass by a vote of 16 to 2. However, I for one can say that I support the bill we are now debating, S. 900, much more than the H.R. 10 I reluctantly supported last year. My biggest concern with that H.R. 10 was, and continues to be, the expansion of CRA.

It has been mentioned that with CRA there have been more loans, houses and businesses. I suggest that, particularly with the time period that we are relating to, those are as a result of low interest rates, not some kind of effort that we are making under CRA.

I want to reiterate that there were 16,380 investigations into CRA, and three small banks were out of compliance. It takes an extra officer to handle CRA, and that is a huge cost to them. To find three people? There has to be something better that we can do.

I strongly encourage my colleagues to support the bill passed by the Banking Committee. It represents a sensible approach to forming the future framework for our financial services industry.

Mr. President, I ask unanimous consent that the time for debate be extended for Senator REED to give his remarks, followed by Senator SPECTER.

The PRESIDING OFFICER. Without objection, it is so ordered.

At the conclusion of Senator REED's remarks, Senator SPECTER will be recognized, and at the conclusion of his remarks, we will adjourn for the luncheons.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I thank Senator ENZI for his graciousness in offering the unanimous consent request.

I want to begin by stating how important I think it is to pass financial service modernization legislation as quickly as possible.

The existing legal framework has become an anachronism over the last several years—in fact, even the last decade or so. The industry has responded to changes in this market faster than the law has responded. It is our obligation to ensure that we have appropriate legal standards, so that our financial services industry can be competitive in a worldwide market, which is highly dynamic, and which requires more flexibility and more responsiveness than is inherent in the current system, which began under Glass-Steagall more than 60 years ago.

So I am a strong proponent of financial modernization. In fact, it is ironic that we were very close in the last Congress to passing financial modernization legislation, which was agreed to by all the major interest groups and which represented a balancing of the need for flexibility, the need for new and expanded powers, the need for financial services industry to be able to reach across prior lines of demarcation to the securities industry, banking industry and insurance industry, and at the same time maintain the principles of safety and soundness, and also the notion that we have to ensure community access to credit. All these things were carefully worked out. Yet, regrettably, H.R. 10 failed in the last few moments of the last Congress.

We are back today to begin to address these issues again on the floor of the Senate. That is an encouraging point because I think the worse thing to do would be to continue to delay and avoid this debate.

Having said that, let me also recognize that the current legislation we are considering, S. 900, significantly deviates from the principles and the compromises that were carefully worked out in the last Congress. In so doing, I think it raises serious questions about the viability of this legislation, regardless of whether it will pass this body or the other body. There is a strong question of whether it will ultimately become law. It think it should become law and, as a result, I think we need to make changes in the form of amendments. In fact, unless we can deal with some of the issues, I am prepared to oppose this legislation, even though I am strongly committed to ensuring that we ultimately achieve a modernization of our financial services industry.

The critical issues that face us with respect to this bill that are troubling are, first, with respect to the Community Reinvestment Act. Over the last several decades, since 1977, over $1 trillion in loans and loan commitments have been made under the Community Reinvestment Act. It has literally helped maintain and rehabilitate communities, both urban centers and rural areas, throughout this country. Without it, this would be literally a foreign issue, particularly in urban neighborhoods and rural areas. With it, we managed to spark hope and build new communities in places that were sadly lacking in significant opportunities and significant hope.

One example of the many in my State is in Woonsocket, RI. It was, at the turn of the century, a thriving mill town. In fact, the river was crowded with factory after factory after factory. With the demise of northern manufacturing, that town has seen difficult times. Through the CRA, citizens were able to avail themselves of significant assistance and credit when they formed the Woonsocket Neighborhood Development Corporation to work toward preserving the neighborhood. I have been there. I have visited these neighborhoods. They are rebuilding old homes that were built in the 1800s. They receive grants and loans from the First National Bank and the Federal Home Loan Bank Board in Boston, all under the auspices of CRA. Without these loans, they would not be able to rebuild their communities. It is necessary, it is important, and it can't be dismissed or short-circuited, as I fear S. 900 attempts to do.

One of the other provisions in the bill that specifically cuts back on the scope and the effectiveness of CRA is the limitation exemption of CRA for rural financial institutions with assets under $100 million. We all admit that a $100 million bank is a small institution. But such banks represent 76 percent of rural banks in the United States, the vast majority of rural institutions. And these banks historically have the lowest CRA ratings. They are a bank that, on their own volition, aren't responsive going through the data to their local community, and by taking away the responsibility of CRA we will make this situation worse.

I think what we will do, in effect, is deny to many rural areas what they think is part and parcel of the local bank in the community; that is, investment in their own community, in their own neighborhood. The reality of this is that people who run banks, which comes as no surprise to anybody, want to make money. When they look around their community and they see a loan for a community project, for housing redevelopment, or a local project to develop a community with a low rate of return, and yet they can see they can park their money someplace in a big city without CRA, the tendency, the temptation, and probably the reality is they will send that money out of that community.

It is the local money that forms the basis of these banks. CRA says you have to look at the community, you have to invest in it, you have to care for it, and you have to commit to it, but you don't have to lose money. There is nothing in the CRA law that says you have to make a bad loan. There is nothing in the CRA law that says you have to do something unsafe, unsound, or foolish in banking. It does say that you have to look for appropriate lending opportunities in your community and make those commitments. That is what I think most people assume that local community banks do day in and day out.

What I think will happen by the exemption is you will find in rural areas it will be harder to get the kind of credit for those types of community projects, rebuilding of housing, small businesses that do not have the kind of attraction or a track record yet to get the support of the local banks. That is something I think would represent a further demise in the community.

Then there is another provision, which has been referred to as ''rebuttal of presumption'' by some and ''safe harbor'' by others, which is included in the legislation and which essentially says, if you have a satisfactory CRA rating, you are presumptively in compliance with respect to a proposed transaction unless someone can come forward with ''substantial verifiable information'' that your rating is not warranted.

First, you have to ask yourself, who outside of the bank would have ''substantial verifiable information''? That is typically not in the public domain. So you are setting up in this rebuttal of presumption, or safe harbor, an impossible task that outside community groups particularly would be able to know the inner workings of the bank so well that they could come in and present ''substantial verifiable information.'' So, in effect, what you are doing is saying, if we get your satisfactory rating, we are not going to pay much attention to the CRA.

The practical reality is that in major transactions, the notion that CRA is a factor that prompts first these depository institutions to behave better before the transaction and, certainly in contemplation of the transaction, review carefully their commitment to their local community, is one of the most effective and nonintrusive ways, because it doesn't represent the Government going in and directing lending or directing anything in a nonintrusive way if a bank responds to the needs of the community, and to vitiate this by this rebuttal of presumption is, I think, a mistake.

One of the other aspects of this rebuttal of presumption is the fact that 97 percent of the institutions have these satisfactory ratings, which could lead to the question of how thorough these reviews are by the regulatory agencies in the first place.

It might add a further argument to the fact that perhaps it is only in the context of a serious review or serious questions raised by outside parties that banking institutions take their CRA responsibilities seriously and, in fact, act upon them. But that is another factor which I think we have to consider when we are talking about dispensing with the opportunity to raise in a meaningful way CRA concerns with respect to major transactions.

Frankly, everything we have read in the paper over the last several years, several days, and several months has been about major transactions between financial institutions. That has been the driving force in the industry and, coincidentally, has helped the bank be more committed and more responsive to the CRA concerns, because they know this is an item that can be looked at and challenged in a meaningful way in a transaction. If you dispense with that, I think that would be a mistake.

There is another provision in the legislation which has been alluded to by the ranking member, Senator SARBANES, and that is essentially providing very limited opportunities to conduct activities in a subsidiary of a banking institution.

The bill as it stands today would establish a $1 billion asset cap on those banks that may engage in underwriting activities for securities and merchant banking in an operating subsidiary. I believe that banks of any size should have the opportunity to form themselves in such a way that they feel most competitive in the marketplace with respect to these two particular functions, securities underwriting and merchant banking. Therefore, they can choose to put them in an affiliate holding company, which would be a Federal Reserve regulation, or in a subsidiary of the depository institution which would be subject to the Office of the Comptroller of the Currency.

I think giving that type of flexibility makes more sense than determining that ''one size fits all'' and all has to be done in the context of a holding company arrangement.

I offered last year, because of these views, an amendment to H.R. 10 which would have allowed banks to engage in securities underwriting and merchant banking subsidiaries. I would anticipate another amendment with respect to that. In fact, this language is in the alternative which Senator SARBANES will offer later today, or which I would expect to be offered to try to reach this point. It is an important point. It is not just a point with respect to turf allocations between Federal regulators; it is an opportunity to give the banking industry the flexibility that all say they deserve.

There is another problem I see in the legislation. That is with respect to the elimination, for all practical purposes, of prior Federal Reserve Board approval before allowing a bank to merge or engage in a new activity. This once again goes to the heart of the regulatory process.

It is nice to assume that banking institutions and financial institutions are responsible and appropriate in their conduct of activities and that they would only conduct a merger that would be in the best interests of not only themselves but the public. But I think that sometimes strains credulity.

It is appropriate, important and, in very practical ways, necessary to have the requirement for prior approval of these major transactions by the Federal Reserve Board, because the Federal Reserve Board has a role independent of the management of the banks. They are trying to maximize shareholder value; they are trying to be competitive in a very difficult market.

But it is the Federal Reserve's responsibility to ensure safety and soundness, that competition will not be adversely affected, and that this transaction will in some way serve the public interest. I don't think you can do that by implication. I don't think you can do that by checking after the fact.

Again, the reality is that when multibillion-dollar institutions merge and then discover after the fact that it really was a bad idea, it is hard to unravel those transactions. To do it right, you have to do it up front. Therefore, this legislation should have prior approval by the Federal Reserve Board.

All of my comments have been appropriately addressed by the Democrat substitute, which will be offered by Senator SARBANES.

Let me conclude with some specific concerns about a question that has concerned me throughout the course of our debate not only in this Congress but in the last Congress. That is whether or not the regulatory framework we are creating will be sufficient to protect the safety and soundness of institutions and ultimately protect the public interest.

We are trying to expand opportunities, to break down the old hierarchies, the old barriers between different types of financial activity, to give the kind of robust, dynamic opportunities that are concomitant with this world of instantaneous transfer of information and billions of dollars across boundaries. In doing that, we have to recognize our ultimate responsibility is to ensure these institutions operate safely, that they are sound, and that regulatory responsibilities are discharged.

We expand dramatically the powers of these institutions under this legislation. But in some respect we are inhibiting some of the traditional regulatory roles of our Federal regulators. For example, in section 114, there is a prohibition which prevents the Office of the Comptroller of the Currency and the Office of Thrift Supervision from examining a mutual fund operated by a bank or thrift. Currently, they have limited authority to do such examinations. We are taking that away.

Section 111, another example, prohibits the Federal Reserve from examining the securities or insurance affiliate unless there is a ''reasonable cause to believe'' the affiliate is engaging in risky activity. Ask yourself, how do you reasonably believe such activity is taking place unless you have the opportunity and indeed the authority to at least go in and check periodically what is going on?

Many of these provisions might create a structure of regulation which is just too porous to withstand the kind of pressures that we see in the financial marketplace. It is reasonable to conclude how we got here. We have emphasized throughout this debate this notion of functional regulation, that securities should be regulated by the SEC, depositories should be regulated exclusively by banking regulators, and that a loose, overarching regulatory provision should be discharged by the Federal Reserve.

Setting up compartments with a loose umbrella invites the notion that something will go wrong, something will fall through the cracks. As we go through this process, the debate and the continued examination of this bill, we have to ask ourselves not only before the legislation is passed but if it is passed afterwards, are there any unintended loopholes that could be exploited, unfortunately, which would be detrimental to safety and soundness?

There is another provision which I think is important to point out. That is the notion that in the context of the insurance business, State insurance regulators basically have a veto over Federal Reserve authority to demand that an insurance affiliate contribute to the State of a holding company. This is a reversal from the traditional authority and the traditional regulatory perspective of the Federal Reserve.

For years, since their active regulation of the Bank Holding Company Act, the doctrine of the Federal Reserve has been that the holding company is a source of strength to the underlying depository institution. That ''source of strength'' doctrine is, in part, repealed by this legislation, because within the context of an insurance company, and specifically the next great round of mergers will be between depository institutions and insurance companies— that is the example that Travelers and Citicorp established when these insurance companies started merging together with banks, big banks, big insurance companies—we are going to have for the first time in our financial history, a situation where an insurance regulator can say to the Chairman of the Fed, even though that depository institution is ailing mightily and my insurance company is very healthy, I'm not going to allow any transfer of funds from the insurance entity to the depository institution because I don't have to, one; and, two, I'm concerned about the long-term viability of the insurance entity, so I will not cooperate.

What that means is that rather than the present model where every subsidiary affiliate of a holding company contributes to the health of the deposit insurance, we have a situation where the taxpayer, through the insurance funds, will be bailing out a bank that very well might have a very healthy insurance affiliate.

These are some of the regulatory examples which I think have to continue to be watched, examined, and thought about. I hope as we go forward that we could engage the Fed in a constructive dialog with respect to their views on how we on a practical basis deal with some of the concerns I raised today.

We have the potential of passing legislation which would be terribly helpful to our financial community. I want to pass the legislation. Unless we resolve the issue of the Community Reinvestment Act, unless we resolve the issue of operating subsidiaries, unless we look more carefully and closely and make changes perhaps in some of the regulatory framework, this is not the legislation that ultimately can or should become law.

I yield my time.

Mr. SARBANES. Mr. President, I ask unanimous consent that when the Senate resumes its session, I believe it is now scheduled for 2:15—after the party caucus break—Senator WELLSTONE be recognized to make his opening statement. I think he thought that was the understanding but we did not actually have a unanimous consent request. This has been cleared by both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 952 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THE PALESTINIAN AUTHORITY

Mr. SPECTER. Mr. President, I compliment the Palestinian Authority for not acting unilaterally to declare statehood. Chairman Yasser Arafat visited me on March 23, and I urged him at that time not to make a unilateral declaration of statehood. He then said to me that when the Palestinian Authority had changed its charter, as it was urged to do so by an amendment introduced by Senator SHELBY and myself some years ago, that there was no credit given for that. I said there should have been credit given. And Chairman Arafat asked if they did not make the unilateral declaration if there would be some acknowledgment of that move. I said I would take the floor when May 4 came, which was the date targeted—that is today—and there was no unilateral declaration of statehood. And there has been none.

I congratulate the Palestinian Authority for its restraint. That is a matter which ought to be negotiated under the terms of the Oslo agreement. Chairman Arafat asked me if I would put it in writing that I would make the statement. And I said I would; and I did.