HOUSE OF REPRESENTATIVES—*Monday, November 4, 1991*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. DERRICK].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 1, 1991.

I hereby designate the Honorable BUTLER DERRICK to act as Speaker pro tempore on Monday, November 4, 1991.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we practice our faith and celebrate the spiritual heritage of those who have gone before, we acknowledge, O God, the richness of our traditions and the strength and the hope that Your word gives to us. May we grow deeper in our own understanding of faith, become more aware of the opportunities for service to others and learn to appreciate people from other traditions and to see their walk of faith. Bless all Your people, O God, and give them Your peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from California [Mr. TORRES] please come forward and lead the House in the Pledge of Allegiance?

Mr. TORRES led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment joint resolutions of the House of the following titles:

H.J. Res. 140. Joint resolution designating November 19, 1991, as "National Philanthropy Day";

H.J. Res. 175. Joint resolution to designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week";

H.J. Res. 177. Joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day"; and

H.J. Res. 280. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week".

The message also announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested:

S.J. Res. 61. Joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day";

S.J. Res. 81. Joint resolution to designate the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, as "National Home Care Week";

S.J. Res. 96. Joint resolution to designate November 19, 1991, as "National Philanthropy Day";

S.J. Res. 145. Joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week";

S.J. Res. 157. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week";

S.J. Res. 164. Joint resolution designating the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week";

S.J. Res. 174. Joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month";

S.J. Res. 176. Joint resolution to designate March 19, 1992, as "National Women in Agriculture Day";

S.J. Res. 180. Joint resolution designating December 1 through 7, 1991, as "Geography Awareness Week";

S.J. Res. 188. Joint resolution designating November 1991 as "National Red Ribbon Month";

S.J. Res. 197. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day";

S.J. Res. 206. Joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day"; and

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian".

PERSONAL EXPLANATION

Mr. ROWLAND. Mr. Speaker, I ask that the RECORD reflect that I was absent from the House last week on Tuesday evening, Wednesday, Thursday, and Friday because of a death in my family.

IOWA CITY AND THE NATION MOURN THEIR GREAT LOSS

(Mr. NAGLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NAGLE. Mr. Speaker, I do not come gladly to the floor today.

On my entry into politics I followed the career of three people. Two were named Kennedy, and one was named King. I have, during my entire life, and public life, tried to reconcile what to me was incomprehensible: That people of reason and compassion would be struck down in the prime of their lives by irrationality. To me it has always been both unfathomable and incomprehensible.

I am afraid I come to the floor today with a similar message of incomprehension and, frankly, bewilderment.

On Friday, in my State, in one of those cities in my district, in a university that I graduated from, five people lost their lives in an act of violence and madness and irrationality. People associated with an intellectual community.

Forgive us in Iowa if we've always felt—with a certain degree of parochial pride—that those kinds of events could not happen in our State. And, when news of the first event came about, I have to admit that we said, "Not Iowa, and, surely in all of Iowa, not Iowa City."

Mr. Speaker, the gunman struck down three of the Nation's top physicists and space research teachers and an academic affairs person who devoted her life to learning and to teaching.

The NASA space program has been crippled by this loss, but, more than that, we perhaps lost the innocent belief that somehow we in Iowa were different, somehow our intellectual community was different, and we, in fact, were creatures of reason.

These people who searched their life for answers and for learning now probably reside in a celestial body. The mystery of the universe that they sought to explore is now unfolded before them in God's good grace and His good judgment. Those who sought to teach can now learn the secrets of life, and those who sought to learn will have that wish fulfilled.

For those of us who remain behind, their loss will always be unabated, our sense of innocence now set aside, our prayers for their family and hopes for their loved ones undiminished. We join, in this little that we can do, in offering them comfort, and offering them our support, and offering them our prayers.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. Speaker, I would request that the House observe a moment of silence for the five people who lost their lives and the one who remains critically ill in Iowa City, in my State, my town, and my university.

[From the New York Times, Nov. 4, 1991]

THE IOWA SHOOTINGS: PORTRAITS OF THE VICTIMS

IOWA CITY, IOWA, November 3.—Following are biographical sketches of the victims in the shooting rampage here Friday, drawn from information from the University of Iowa and interviews.

Linhua Shan, 27 years old, was a research investigator for the university's Department of Physics and Astronomy. He received a doctorate from the department in May; his dissertation sought to explain the structure of the rings of Saturn.

Mr. Shan, who came from a small town in southern China, was a member of the theoretical space physics group, which had been organized by two of the slain professors, Christoph K. Goertz and Robert Alan Smith. Mr. Shan was married and had no children.

Robert Alan Smith, 45, came to the university in 1989 from the Science Applications International Corporation, where he had been a research physicist for eight years.

Dr. Smith had published more than 30 scientific articles in professional journals and was known as a leader in the field of space plasma theory. He received his bachelor of science degree from Northwestern University in 1968 and a Ph.D. from the University of Maryland in 1973. He was married and the father of a six-year-old son.

Christoph K. Goertz, 47, came to the university in 1973 as a research associate and was appointed a full professor of physics in 1981.

Dr. Goertz published more than 150 scientific articles and served as editor of the journal of Geophysical Research. Earlier this year, he had been elected an external scientific member of the Max Planck Institute for Extraterrestrial Physics in Garching, Germany.

A native of Danzig, Germany, he received his bachelor's degree from the Technische University Berlin in Berlin in 1969 and his doctorate from Rhodes University in Grahamstown, South Africa, in 1972.

Dwight R. Nicholson, 44, came to the university in 1978 and became a full professor of physics in 1986. He had been chairman of the Department of Physics and Astronomy since 1985.

Active in plasma physics research, Dr. Nicholson also published a graduate-level textbook on plasma theory. He received his bachelor's in physics from the University of Wisconsin in 1969 and his doctorate in plasma physics from the University of California in Berkeley in 1975.

T. Anne Cleary, 56, was the vice president for academic affairs. She came to the university in 1979 as a professor of educational measurement and statistics.

Dr. Cleary was an authority in educational testing and published many articles on the subject. Before coming to Iowa. Dr. Cleary had been a vice president at The College Board, where she had worked since 1971.

She received her bachelor's from Marquette University in Milwaukee and her doctorate in psychology and statistics from the University of Illinois, Urbana.

Miya Sonya Rodolpho-Sioson, 23, who is listed in critical condition, was working temporarily as a receptionist in the office of academic affairs.

Ms. Rodolpho-Sioson is an honors student at the university, where she majors in Spanish and Portuguese and global studies. Born in the Philippines, Ms. Rodolpho-Sioson received her American citizenship last month.

(A moment of silence was observed.)

TRIBUTE TO JOHN DU CHATEAU

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, I rise today in honor of John Du Chateau, a man who gave his life helping the community of Luxemburg, WI.

On October 23, Mr. Du Chateau died of a heart attack while fighting a barn fire. Under his leadership, the Luxemburg Fire Department had been modernized and improved, for the benefit of all.

For over 44 years, John was a member of the Luxemburg Volunteer Fire Department. He gave his time, and eventually his own life, helping his friends and neighbors.

In 1990, he was named Fire Fighter of the Year by the Wisconsin State Fire Fighter's Association.

During his 14 years as chief of Luxemburg's Fire Department he was outstanding in all he did, and he did a lot.

John Du Chateau provided a shining example to young and old alike. He willingly gave of himself to better his community, his county, State, and country.

I offer my heartfelt condolences to his friends and especially his family. Luxemburg has lost a great friend and a fine leader.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills and joint resolutions on Friday, November 1, 1991:

H.R. 1046. An act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans;

H.R. 2686. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

TRIBUTE TO HENRY B. GONZALEZ' 30 YEARS OF SERVICE

(Mr. TORRES asked and was given permission to address the House for 1 minute and include extraneous matter.)

Mr. TORRES. Mr. Speaker, today the House enters into the last phase of the banking reform bill of 1990. The bank reform bill has had the able leadership of the chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Texas [Mr. GONZALEZ].

Mr. Speaker, I rise today to address my colleagues in the House to indicate that the gentleman from Texas [Mr. GONZALEZ] today completes 30 years as a Member of this House. It is an extraordinary record of a man who first came to the U.S. Congress 30 years ago, in 1961. Prior to that he was a member of the city council of the city of San Antonio, TX, and served in the latter portion of the term as mayor pro tempore. In 1957, he was elected as a Texas State senator, resigning in 1957 to come here to the House.

Mr. Speaker, I ask my colleagues, all my colleagues assembled, to join me in wishing the gentleman from Texas [Mr. GONZALEZ] good wishes for the many years he has given, not only to this House, but to this country, and I am including an article which recently appeared in Unidos magazine attesting to his many deeds for this House and for the country.

The article referred to is as follows:

HENRY B. GONZALEZ

(By Robert Moreno)

The enigma of Congressman Henry B. Gonzalez is that he really is no enigma at all. Since assuming the Banking Committee Chairmanship two years ago, about the only concession the combative San Antonio Texas lawmaker has made to the well-financed banking interests his Committee oversees, has been the retirement of his trademark "Nathan Detroit" suits in favor of more conservative pin striped ones.

Such independence continues to perplex and confound the essentially non-minority establishment legislators and influence peddlers that predominate Congress.

The enigma, if there ever was one, is that after almost 30 years in Congress, Henry B. is still un-bought, un-bossed and apparently largely unimpressed, with even the leadership of his own political party.

Usually described as a maverick, combative and honest to a fault, Henry B. is the ultimate outsider who got inside.

Folks in Texas have known this for years. Now that he is arguably one of the most powerful Committee Chairmen in the Congress, the rest of the country is now receiving regular doses of Henry B.'s Texas tutorial in "How to come to Washington and not lose your ethics."

"When Henry B. took over the leadership of the Banking Committee I suppose there were a lot of folks, mostly those folks who didn't know him and who therefore have tended to underestimate him, that Henry was going to change", reflects Tony Sanchez, Chairman of the International Bank of Commerce, the largest minority owned bank in the United States.

"I haven't agreed with all of Henry's positions, but I've always known, as I believe all Texans know, that he's honest, a man who calls them as he sees them. A man who has

always brought much needed balance to Congress", Sanchez adds. And Sanchez should know. He's known Henry B. for over 50 years.

Today Henry B. Gonzalez is unquestionably the most powerful Latino to ever walk the halls of Congress. And considering the amount of national attention now focused on the banking and savings and loan industry fiasco, Henry B.'s ascendancy to the Banking Committee Chairmanship continues to make a lot of powerful financial interests in this country nervous.

Those "interests" are nervous because Gonzalez is not part of the Washington 'old boy network'; never has been, doesn't want to be, never could be.

The great 'unsaid' in all the negative rhetoric they expound about his conduct as Committee Chair (his leadership has been challenged twice), is that the Chairman represents an ethnic and cultural difference that continues to confound them. He's a non-yuppie Tex-Mex who's not forgotten the battle scars he received fighting civil rights battles in racially divided San Antonio in the 1950's.

"You have to understand that Henry B. is a product of Jim Crow Texas. He cut his political teeth at a time when Hispanics had to take tough, unrelenting stands, against almost impossible odds, in order to achieve their goals. If he appears to be sometimes uncompromising, it's because he has had to be", explains fellow banking Committee member Congressman Esteban Torres, (D)–CA. "But I wouldn't underestimate him as a legislator. He probably has the most acute appreciation of history and legislative procedure of any political leader I know and he uses historical acumen to his benefit", Torres continues.

Henry B. doesn't reflect the polish and tact of those legions of sometimes too compromising Hispanics who were churned out of guilty white liberal colleges and universities during the sixties and seventies, and who are just now beginning to influence business and public policy. Henry B. doesn't look like a lot of Washington lawmakers. He doesn't talk like any Washington dealmakers. The country club, tennis set environment of your average investment banker is as foreign to Henry B. as George Bush spending a night out with Saddam Hussein in Bagdad.

That's the rub.

Since he doesn't act like the majority, and doesn't compromise like the majority, that white majority continues to embrace an inability to understand real "cultural" differences in the man and so his intelligence and political prowess are constantly underestimated.

Many of those differences were formed during Henry B's. youth in those "bad old days" for Mexican-Americans in Texas. "It was a time", Congressman Gonzalez recollects, "when things were so tough that if a dog bit a Mexican, they'd kill the Mexican, send his head to Austin for analysis and give the dog rabies shots."

Things weren't quite that extreme for Mexicans growing up in Texas. Nevertheless Henry B. has always conducted his political life as a man who has a range of indelibly etched experiences of what it's like to grow up poor, hopeless and uneducated in America. He's a man who has never forgotten that even in a society as full as opportunity as America, millions of people continue to suffer quiet lives of desperation.

This is the kind of stuff that makes him challenge the leadership of his own party, as he did when he demanded hearings on the high stepping antics of banker Charles Keating and his five friends in the Senate of the United States; in spite of concerns that such hearings would inevitably embarrass the Democratic leadership, which it did.

The abuse and waste of billions of taxpayers dollars, irrespective of the political affiliation of the perpetrators, was Mr. Gonzalez's only concern. When they charge he's difficult and not up to the challenge of guiding the Banking Committee through the challenges it faces while resolving the nation's current banking and savings & loan crisis. When they challenge his leadership of the Committee, as they have twice since he assumed leadership, what they're really saying is that they want someone in the position who's more inclined to protect the status quo.

It's a happy accident that Henry B. is in a position to do something about the banking fiasco. Former Committee Chairman Fernand St. Germain, would never have held such hearings on the Keating five. "I would certainly agree with that", Mr. Gonzalez smiles wryly. With regard to the five Senators who were brought up before his Committee, he is totally non-sympathetic.

Quoting a line from former Illinois Senator Paul Douglas, the Congressman laments, "A legislator should not immediately concede that the constituent is always right and the administrator is always wrong, but as far as possible find out the merits of each case and only make such representations as the situation permits."

Of course the question is 'when does the situation permit?' My feeling is that if a legislator doesn't know the difference by the time he comes to Congress, then it's too late. I don't care what code of ethics you have. Anyone who doesn't know the difference between genuine constituent service and influence peddling doesn't belong in Washington." Gonzalez continues.

"Not many people know that Henry B. represents an unparalleled political legacy that few Latinos can or ever will match. He's a person who's campaigned through 11 states as national chairman of the Viva Kennedy Clubs. Vice President Lyndon Johnson teamed up with famed Mexican comedian Catinflas to barnstorm for Henry B. during his first bid for Congress in 1961," adds Torres.

In the final analysis, that's what may be so threatening about Henry B. The real enigma of the man may be how a person of such integrity has been able to survive through 15 terms of Congress.

CRITICIZING THE PRESIDENT IS NOT ENOUGH

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker and Members of the House, Members of this body who oppose the President begin to take the podium in steams of objection and criticism of the President of the United States because they tie in to slipping numbers of the economy with what they perceive, with what they are eager to see, as being failed policies of the President of the United States.

□ 1210

I do blame them, but it is still politics. Yet we can put all their records of rhetoric together and it does not create one job, and they continue to oppose the President's policy which he enunciated from the first day he took office, to create economic growth and create jobs. There is only one way to do that, and that is to allow incentives for people to invest in creating new businesses, to expand old businesses, and thus to put people to work.

It is not enough to stand up here and criticize the President. It is more important for us to listen to what the President proposes on economic growth. We cannot have the economy turn around and jobs created without economic growth.

A NEW SYMBOL FOR REPUBLICANS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Presidents Coolidge and Hoover did it; Presidents Reagan and Bush did it. To get elected, they cut taxes. When that did not work, they raised taxes. When that did not work, they blamed the Democrats.

But that is not what Mr. Bush said as a candidate in 1980. He said:

> If you elect Ronald Reagan, he will double the national debt in his first term, our banks and savings and loans will collapse, and poverty and bankruptcies will explode. Furthermore, it is voodoo economics."

Now what is the President saying? "The Democrats made me do it."

I think it is time, Mr. Speaker, that we should have a picture of Presidents Hoover, Coolidge, Reagan, and Bush, not on Mount Rushmore but on a new Republican designer currency, the 1992 food stamps.

OVERREGULATION THREATENS OUR NATION'S SMALL BUSINESSES

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, I recently got a letter from Mr. Joe Baker, the owner of a small roofing company in Wichita, KS.

Mr. Baker wrote:

> It is not the IBMs, General Motors or Boeings who are creating the new jobs, . . . inventing the new products and in general powering the American economy. It is the small businessman.

He told me:

> I don't think the average politician has any idea how frustrated and mad the small businessman is becoming over the unbearable regulations that are being jammed down his throat. Our survival is on the line. We need leaders with some common sense.

Mr. Speaker, this roofer from Wichita is right on target. We need to use some basic common sense when we con-

sider passing laws that throw yet another obstacle in the path of the small business owner.

I would urge my colleagues to keep Mr. Baker's comments in mind this week as we vote on a number of issues affecting small business. Because it is easy to say that you're for small business. But it's how you vote that really counts.

REGULATION FOR THE NATION'S BIG BANKS

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute, and to revise and extend his remarks, and include extraneous matter.)

Mr. MAZZOLI. Mr. Speaker, we have all heard of the doctrine, which I consider to be a bankrupt doctrine, that certain banks are too big to fail, that their failing would be so thunderous and have so many negative reverberations that they cannot be allowed to fail.

According to the New York Times this morning, Mr. Speaker, there is a new bank doctrine out that some banks are too big, in this case Citibank, to be criticized or to be publicly told that they have to change their lending practices, their management practices, or improve their capital position.

This has implications, Mr. Speaker, in many respects. We have before us a bill that will be voted on this evening, the bank reform bill, which does permit banks to get bigger. It does permit banks to become more powerful and to extend their reach into certain nontraditional commercial areas. That could make some even bigger than Citibank today, and if being big means they are too big to fail or if being big means they are too big to be criticized, Mr. Speaker, we are making a very serious error. I would hope that the Committees on Banking of the House and the Senate would look into the question of whether Citibank is too big to be publicly regulated.

A TRIBUTE TO THE FBI ON ITS HOSTAGE RESCUE EFFORTS IN ALABAMA

(Mr. OXLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. OXLEY. Mr. Speaker, as a former special agent of the Federal Bureau of Investigation, I took great pride in the actions of the FBI's hostage rescue team in safely ending the August uprising at the Federal Correctional Institution in Talledega, AL. This was achieved under the aggressive leadership of the Department of Justice, and with close coordination between the FBI and the Federal Bureau of Prisons.

After the takeover, Acting Attorney General William Barr immediately designated the FBI with primary responsibility for a tactical response. Ten days later, in keeping with the team's motto, "To Save Lives," the 50-man hostage rescue team executed a deliberate assault with surgical precision, and within moments safely removed the men and women being held hostage.

I can speak of the danger that these agents faced on that early morning in August. We owe these extraordinary men, as well as all law enforcement officers who place themselves in harm's way each day, a debt of gratitude for the uncommon public service they provide.

Mr. Speaker, I insert into the RECORD at this point the August 30, 1991, press statement of the Acting Attorney General.

STATEMENT OF ACTING ATTORNEY GENERAL WILLIAM BARR

I have a short statement.

The hostage situation at Talladega is over. At 4:40 a.m., EDT, I authorized the FBI's Hostage Rescue Team, supported by FBI SWAT teams and Bureau of Prisons' Special Operations Response Teams, to effect a rescue.

I took this step based on the recommendation of the Director of the FBI and the Director of the Bureau of Prisons that the rescue could be effected with a high probability of success and that further delay would increase the risk to the hostages and others.

All of the hostages were rescued safely, and they are now receiving medical treatment. None were injured in the rescue and no members of the rescue teams were injured. We believe that one inmate received a minor injury.

This was a terrorist incident where the lives of innocent persons were put at risk in an attempt to force actions by the Government. As in any such incident, our concern was minimizing the risk of harm to the hostages and others.

We took action at this time because in our best professional judgment it was necessary to achieve that goal. We could not make concessions to terrorists holding hostages—to do so would put the thousands of dedicated professionals working in our prisons at constant risk.

Moreover, there was considerable risk that the situation inside the prison would deteriorate requiring an emergency response. Such an emergency response could increase the risk of harm to the hostages, rescue team, and inmates.

I would like to thank Mike Quinlan, Director of the Bureau of Prisons, William Sessions, Director of the FBI, Floyd Clarke, Deputy Director of the FBI, and Bill Baker, Assistant Director of Criminal Investigations of the FBI, and all of the people who work with them for their superb work throughout this crisis.

But, above all, I would like to express my appreciation to the dedicated law enforcement personnel who took part in this operation. We are grateful beyond words and proud beyond measure of their professionalism, dedication to duty, and willingness to put their lives on the line to save the hostages. We truly have the best law enforcement personnel in the world.

I also want to recognize the tremendous resolve of the hostages and their families. They have been put through the most difficult situation imaginable and conducted themselves with courage, honor, and professionalism.

THE BUSH TEAM: A QUARTER OF A MILLENNIUM IN WASHINGTON

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, President George Bush's campaign to eradicate Potomac fever makes a great stump speech, but it contrasts starkly with the epidemic within his own administration.

When it comes to Potomac fever, George Bush is a carrier.

Here are the grisly facts. President Bush, his Vice President DAN QUAYLE, and his Cabinet Secretaries have piled up 230 years living in Washington. By next year's Presidential election, the Bush entourage will have amassed almost a quarter of a millennium bivouacked inside the beltway.

When Bush rails against entrenched powers in Washington, he might as well be haranguing a mirror. Bush himself has logged 25 years in evil Washington. He, QUAYLE, and many of his Cabinet Secretaries have spent most of their adult lives toiling in the same vineyards he rhetorically torches.

THE POTOMAC FEVER ALL STARS

President George Bush: 1967–91: 25 years.

Vice President Dan Quayle: 1977–91: 15 years.

Agriculture Secretary Edward Madigan: 1973–91: 19 years.

Commerce Secretary Robert Mosbacher: 1989–91: 3 years.

Defense Secretary Dick Cheney: 1968–91: 24 years.

Education Secretary Lamar Alexander: 1991: 1 year.

Energy Secretary James Watkins: 1982–86, 1989–91: 8 years.

HHS Secretary Louis Sullivan: 1989–91: 3 years.

HUD Secretary Jack Kemp: 1969–91: 22 years.

Interior Secretary Manuel Lujan: 1969–91: 22 years.

Attorney General-nominee William Barr: 1971–91: 20 years.

Labor Secretary Lynn Martin: 1981–91: 11 years.

Secretary of State James Baker: 1975–91: 17 years.

Transportation Secretary Samuel Skinner: 1989–91: 3 years.

Treasury Secretary Nicholas Brady: 1982, 1989–91: 4 years.

Veterans Secretary Edward Derwinski: 1959–91: 33 years.

A PLEA TO RESIST EFFORTS TO BREAK THE BUDGET AGREEMENT

(Mr. KYL asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. KYL. Mr. Speaker, one of the selling points of last year's budget deal, the Budget Enforcement Act of

1990, was that it would lock in the defense budget for 3 years. Many of us predicted that some of our big-spending colleagues, however, would soon want to change that, and just a year after the budget deal was signed we have legislation introduced to do precisely that.

I submit, Mr. Speaker, that this is the wrong time to be breaking the budget deal. Let us allow it to operate the way it was intended to operate.

In the first place, there is no big peace dividend, as some have suggested. It costs money to restore closed military bases to an environmentally sound status. It costs money to dismantle nuclear warheads. But even if there were to be a peace dividend, it seems to me the best news for the taxpayers of this country and for our economy would be to allow the people to keep that money by reducing taxes. Or, we could reduce the Federal budget deficit rather than simply stealing it from defense and spending it on other domestic discretionary programs.

So I hope that this legislation to break the budget deal after 1 year and combine the defense budget with other discretionary spending budgets will be a nonstarter, Mr. Speaker.

BEATING THE DEVIL

(Mrs. COLLINS of Michigan asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Mrs. COLLINS of Michigan. Mr. Speaker, this past week the citizens of Detroit beat the devil. Some years ago Halloween's "Devil Night" changed from childish pranks to devastating arson, burning down many of the abandoned buildings in the city of Detroit.

But last week 36,000 good people from Detroit and friends from the suburbs took to the streets in citizen patrols, and they were successful in beating the devil. Last week, on Devil's Night, there were only 62 fires in the city of Detroit, and the average for a city of that size on an average night is about 70 fires.

Mr. Speaker, this just tells us what good people can do to take back their streets when they get involved.

KEEP FAITH WITH WARDS COVE WORKERS

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, last week the Senate passed a historic civil rights bill after extensive negotiations. One of its achievements is to overturn the Supreme Court decision in a case called Wards Cove Packing Co. versus Atonio. That decision made it harder to challenge employment practices that hurt minorities and women.

But the Senate added a little amendment to the civil rights bill. It says that the bill does not apply to the Wards Cove case itself. That means that after 17 years of litigation, 2,000 Asian-American and Alaska Native cannery workers will be the only Americans the Civil Rights Act does not protect.

That amendment should outrage everyone on this floor who believes in equal justice under the law. It is a cynical betrayal of people who have been to court nine times over 17 years, trying to get justice.

I want to pass a strong civil rights bill that works for every American. I hope the Rules Committee will allow an amendment removing the exemption for the Wards Cove case. I hope my colleagues on both sides of the aisle will support that amendment and the principle of equal justice.

□ 1220

FHA THWARTED IN PROVIDING HOME OWNERSHIP

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. VENTO. Mr. Speaker, the U.S. economy continues to falter unpredictably, which is of deep concern to people across the country, and certainly Members of this body.

Home ownership has always been one of the basic pillars of our economy, but the FHA program changes in law provided significant downpayment increases, and now the regulatory requirements have made for even a larger downpayment. HUD's special regulatory efforts to pile increase upon increase amounts, yet above the amounts provided in law, are taking their toll. The fact is that FHA loans are down by 35 percent when measured compared to comparable time periods last year.

The administration, and specifically the Secretary of HUD, has touted home ownership as being very important. But our economy cannot function when they take away the basic tools and basic opportunities for home ownership, such as the FHA Program.

Mr. Speaker, in my own State FHA loans have dropped over 50 percent. Part of it is the general economy, but a great part of the decline of home ownership is that the effort to save the FHA Program, pay increasing upfront money, and lowering risk is killing the FHA program.

Mr. Speaker, this solution was wrong in the beginning, and I think the evidence of home ownership decline and the evidence of FHA loan decline speaks for itself.

No amount of up-front money or downpayments are going to make up for the regulatory shortfall of the 1980's and the out-of-control appraisal process that was in some instances overtly and covertly fraudulent. Mr. Speaker, hopefully the Congress will continue to closely follow the consequences of the Bush administration policy which purports to save the FHA Program by making it unworkable.

The following is a news article that was printed in the weekend news reports which addresses the consequence of the FHA changes and the decline of FHA loans when they are most needed and historically most used in exactly the type of countercyclical economic downturn that we are experiencing today.

LOAN APPLICATIONS OFF SHARPLY AT FHA

(By Ann Mariano)

DALLAS.—Applications for Federal Housing Administration-insured home loans have dropped sharply in the six months ended Sept. 30, largely because buyers must now put down more cash than in the past, according to a report by the Mortgage Bankers Association of America.

Since July 1, home buyers using FHA-insured loans have been required to pay in cash for 43 percent of the fees and expenses charged at the time a sale is completed. Before the change, buyers could cover all of these costs by financing them as part of the mortgage.

Under the new rules, a buyer who takes out a $100,000 mortgage and has $2,500 in closing costs must pay about $1,000 more in cash than under the previous formula, according to the Mortgage Bankers Association (MBA). Closing costs include charges for appraisals, inspections, settlement attorneys' work, real estate brokers' commissions, title insurance premiums and fees charged by lenders at the time of sale.

Department of Housing and Urban Development officials said the cash payments were made necessary because of heavy losses in the FHA insurance program in recent years. The FHA is part of HUD.

The number of FHA loan applications plummeted to 63,419 in September from 97,450 in April, a 35 percent decline, according to HUD records. During the same period, applications for mortgages insured by the Department of Veterans Affairs, which did not impose new fees, rose about 40 percent.

Private insurance companies reported receiving about 60,000 applications a month during the same six months, a higher level than in 1990, said Brian J. Chappelle, MBA staff vice president.

The number of buyers seeking FHA loans dropped by nearly half in some states, such as Minnesota and North Carolina, during the six-month period from March through September. The FHA's business fell by 29 percent in Texas and 26 percent in Illinois.

In the Washington area, FHA insurance applications declined by about 37 percent, according to HUD records.

There were about 61,000 applications for privately insured mortgages in August, an increase of about one-third compared with 1990. Similar increases being reported for June and July, Chappelle said.

Although home sales have dropped in many parts of the nation during the recession, thousands of homeowners have taken advantage of interest rates at 9 percent or less for a 30-year, fixed-rate loan to refinance mortgages. About half of all loans being issued now are refinancings and in many cases owners are taking out conventional mortgages to refinance FHA loans, Chappelle said. Less

than 20 percent of the FHA's business this year has been in refinanced loans, he said.

As a result, the FHA is losing many of the strongest loans in its portfolio, leaving the agency with a higher proportion of mortgages with owners who may eventually default or be late in making payments, Chappelle said.

"FHA is the beginning of the housing chain," said Angelo Mozilo, new president of the MBA. People often buy their first home with an FHA-insured loan and sell it several years later to move up to a more expensive house. If the FHA is weakened, the entire housing market is in trouble, he said.

The FHA has suffered heavy losses over the past four years in the wake of the housing recession, especially in the West and Southwest. The FHA operates four funds to insure the loans on single-family homes, apartment projects and several types of specialized housing. The single-family fund is the strongest, but it has suffered large losses in the last four years because of collapsing real estate markets.

Without the reform ordered by the Bush administration, "FHA would have gone out of business," said HUD Deputy Secretary Alfred A. DelliBovi. The extra charges have not been in effect long enough "to reach a conclusion" about their impact on prospective buyers, he said. But even with the new restrictions, "the FHA program is still more attractive" to purchasers than other mortgage insurance, DelliBovi said.

In a recent report, the Price Waterhouse accounting firm said the FHA still has not resolved its "longstanding internal * * * weaknesses" in the way it manages the housing insurance funds. The FHA "must place top priority on upgrading" accounting and financial management, the company said.

Testifying at a recent hearing before the House Banking, Finance and Urban Affairs Committee's housing subcommittee, FHA Commissioner Arthur J. Hill said the agency will need three to five years to clean up all of its problems. "It's not a shortterm solution," he said.

Rep. Mary Rose Oakar (D-Ohio), a subcommittee member, said Hill's estimate is "very upsetting to me. I don't buy the fact that we can't do better."

If HUD does not have enough staff "to clean up the mess at FHA, which is really disgraceful, tell us," she said. Congress will "work with you" to get more help.

Joseph M. Ventrone, Republican deputy staff director for the House Banking Committee, said fear of "the demise of FHA is a little premature." Ventrone, who spoke at the MBA convention here, said he could "predict with some certainty" that Congress will investigate if the FHA appears in danger of losing too much business.

TRIBUTE TO BILL GRAHAM

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, last weekend America lost a giant of the rock music world, Bill Graham. He was a constituent of mine, and I was proud to represent him in the Congress.

For me it was a personal loss. Bill Graham was a man of toughness and compassion, a man who survived the Nazi Holocaust, with an incredible sense of who he was. He never forgot and he worked to make America and his own community the best it could be.

Bill and I did not always agree on everything, but there was always mutual respect, and I was lucky. Bill took me as one of his causes and he helped me in my career.

To his sister Esther, whom he revered, to his son David, whom he adored, I send my deepest condolences, as well as to the rest of the family and friends.

Mr. Speaker, yesterday, 300,000 Californians came to Golden Gate Park in San Francisco to honor Bill Graham. The performers he loved gave of themselves selflessly. It was a fitting tribute, music for Bill; and Bill will live on in the music.

SYRIA AND THE PEACE CONFERENCE

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, over the weekend all of the parties in the Middle East peace conference began to make some progress. All of the delegations, including the Palestinian delegation, sat down one-on-one with the Israeli delegation for the first time in history. At this point, the one party that seems most likely to derail the peace conference is Syria, along with the puppet government in Lebanon.

Syria's position is that Israel must give back all occupied territories before discussing anything further. Syria's primary objective is to regain the Golan Heights, which it lost in battle after using it to shell Israeli farmers. That is what it has to gain at the conference, and it seems to have little to lose. Has the United States pressed Syria to give up its practice of terrorism, or its massive arms buildup? And what about Lebanon? How can anyone ask Israel to withdraw from the security zone in southern Lebanon when the country is being run by Syria, and overrun by Syrian troops?

Foreign Minister Al-Sharaa's rhetoric reveals how little Syria cares about the truth. At a conference meant in part to deal with the rights of Palestinians in Israel, a topic Israel is willing to address, Al-Sharaa blatantly misrepresents conditions for minorities in his country, claiming that the Jews of Syria live in complete freedom. In fact, Syrian Jews are forbidden the right to travel and emigrate abroad, while being denied religious freedoms at home. This issue must be addressed at the peace conference as much as any other.

Now all of the parties have begun to move towards the goal of peace. But Syria would have the other Arab countries cease their talks until Syria's demands are met. Syria pretends to be concerned about the Palestinians, but it would derail the peace conference for its own purposes, just as it derailed a schedule regional conference on water rights. As one Palestinian official said of Syria, "They have said they could wait a hundred years to get the Golan Heights back from Israel. We don't have that luxury."

Mr. Speaker, I hope that the other Arab countries don't make the mistake of thinking that President Assad has their interests at heart. And I hope our President starts treating Syria like the kind of state it is, before yet another relationship with an Arab despot explodes in our faces.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore. (Mr. DERRICK). Pursuant to House Resolution 264 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

□ 1225

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, with Mr. CARR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, November 1, 1991, the amendment offered by the gentleman from Iowa [Mr. LEACH] had been disposed of.

It is now in order to consider amendment number 8 printed in House Report 102-281, as modified by the order of the House of Friday, November 1, 1991.

Pursuant to House Resolution 266, if amendments numbered 8 and 9 are both adopted, only the latter amendment adopted will be considered as finally adopted and reported back to the House.

AMENDMENT AS MODIFIED OFFERED BY MR. VENTO

Mr. VENTO. Mr. Chairman, I offer an amendment, as modified.

The CHAIRMAN. The Clerk will report the amendment, as modified.

Amendment, as modified, offered by Mr. VENTO: Page 185, beginning on line 12, strike sections 301, 302, 303, 304, 305, and 306 and insert the following new sections (and redesignate the succeeding section and conform the table of contents accordingly):

SEC. 301. NATIONWIDE BANKING.

(a) INTERSTATE ACQUISITIONS.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended to read as follows:

"(d) INTERSTATE ACQUISITIONS AND BRANCHING.—

"(1) IN GENERAL.—Subject to paragraph (4), the Board may approve an application under

this section by a bank holding company or foreign bank to acquire, directly or indirectly, any voting shares of, interest in or all or substantially all of the assets of any additional insured depository institution or bank holding company located in any State.

"(2) STATE LAW.—Subject to paragraph (4), any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring company, foreign bank, or subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such company or foreign bank; or

"(C) any other factor that, directly or indirectly has the effect of prohibition or limiting the acquisition of shares or control of an insured depository institution or bank holding company located in that State by an out-of-State bank holding company or foreign bank if such factor is not applied with similar effect bank if such factor is not applied with similar effect in the case of acquisitions of insured depository institutions or bank holding companies located in such State by bank holding companies located in the State.

"(3) CONCENTRATION LIMITS.—The Board may not approve an application under paragraph (1) if—

"(A) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institutions deposits of the United States, as determined under regulations of the Board; or

"(B) the applicant controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that a State may waive the applicability of this subparagraph.

Nothing in this paragraph affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies.

"(4) LIMITATIONS ON CONSOLIDATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any insured depository institution acquired after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to paragraph (1) may not be a party to any transaction under subsection (h) before the end of the 3-year period beginning on such date of enactment.

"(B) PROVISION APPLICABLE TO CERTAIN INSTITUTIONS.—Subparagraph (A) shall not apply with respect to any insured depository institution the acquisition of which occurs after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to an application or notice filed before such date with any appropriate Federal banking agency or State bank supervisor.

"(5) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks shall apply, except that a State law which requires that that bank must have been in existence longer than 5 years shall not apply unless such a law is in effect on such date of enactment.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act.

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i) respectively; and

(2) by inserting after subsection (c) the following:

"(d) INTERSTATE BRANCHING BY NATIONAL BANKS.—

"(1) IN GENERAL—

"(A) APPROVALS AUTHORIZED.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Comptroller of the Currency may approve an application under this section which will permit a national bank that is adequately capitalized and adequately managed to establish or acquire, and operate, a branch located outside the State in which the main office of such bank is located, subject to paragraphs (2), (3), and (6)

"(B) CONDITIONS.—In determining whether to grant approval under subparagraph (A), the Comptroller of the Currency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank officials regarding the bank's compliance with applicable State community reinvestment laws.

"(C) APPLICABLE LAW.—

"(i) IN GENERAL.—Subject to paragraph (6), any branch established or acquired under subparagraph (A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was the national bank situated in that State.

"(ii) FILING REQUIREMENT.—A host State may require any national bank that has its main office in another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any national bank the main office of which is located in another State from establishing or operating a branch within the host State if that national bank or its branch materially fails to comply with the filing requirements.

"(2) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (1) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of the enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A national bank that has its main office in a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(3) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—The Comptroller of the Currency may approve an application under paragraph (1)(A) before the expiration of the 3-year period described in paragraph (1)(A), if the State in which the branch is or will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (1)(A).

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (2), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(4) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the Comptroller of the Currency shall consider any timely comments of the host State prior to approving that application); and

"(B) subject to paragraph (6) a State may impose other conditions on a branch established or acquired under paragraph (1)(A) if—

"(i) the conditions to not discriminate against out of State banks or bank holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(5) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The Comptroller may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State banks or bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(6) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks or branches shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of

the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means, with respect to any national bank, a bank which maintains capital in an amount which meets or exceeds the required minimum ratio for each relevant capital measure.

"(B) HOST STATE.—The term 'host State' means the State in which a national bank establishes or maintains a branch other than the State in which the bank has its main office and is engaging in banking business.

"(C) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 303. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) INTERSTATE BRANCHING BY STATE BANKS.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Act of 1991, an insured State bank that is adequately capitalized and adequately managed may establish or acquire, and operate, a branch located outside the State in which the bank is chartered if authorized by the law of the State in which the bank is chartered, subject to paragraphs (5), (6), and (9).

"(4) APPLICABLE LAW.—

"(A) IN GENERAL.—Subject to paragraph (9), any branch of an out-of-State bank shall be subject to the laws of the host State as if such branch were a branch of a bank chartered by that State.

"(B) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (3) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(C) FILING REQUIREMENT.—A host State may require any insured bank chartered by another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any State bank chartered by another State from establishing or operating a branch within the host State if that State bank or its branch materially fails to comply with the filing requirements.

"(D) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(i) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(ii) supervise, regulate, and examine State banks chartered by that State.

"(5) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (3) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A State bank that is chartered by a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(6) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State bank may establish or acquire, and operate, a branch outside the State in which the main office of the bank is located, subject to the provisions of this subsection, before the expiration of the 3-year period described in paragraph (3), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (3).

"(B) AFTER THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (5), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(7) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the home State banking authority and the appropriate Federal banking agency shall consider any timely comments of the host State prior to approving that application); and

"(B) Subject to paragraph (9), a State may impose other conditions on a branch established or acquired under paragraph (3) if—

"(i) the conditions do not discriminate against out-of-State banks or banking holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(8) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The home State banking authority and the appropriate Federal banking agency may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(9) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry only through the acquisition of existing banks or branches shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(10) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch established in the host State by banks chartered by another State for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch are conducted in a manner consistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank authority as described in subparagraph (A) determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch in question were a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENT.—The State bank authorities from one or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) IN GENERAL.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTEREST AGREEMENTS.—If the appropriate Federal banking authority determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking authority shall not defer to State examinations of the out-of-State branches.

"(11) DEFINITIONS.—For purposes of this subsection—

"(A) HOST STATE.—The term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.

"(B) ADEQUATELY CAPITALIZED.—For the purposes of this subsection, the term 'adequately capitalized' means, with respect to any insured State bank, a bank which maintains capital in an amount which meets or exceeds the minimum ratio for each relevant capital measure.".

SEC. 304. BRANCHING BY FOREIGN BANKS.

(a) IN GENERAL.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) INTERSTATE BANKING OPERATIONS.—

"(1) IN GENERAL.—A foreign bank may establish and operate—

"(A) a Federal branch or agency, with the approval of the Board and the Comptroller of the Currency, in any State outside its home State to the extent that such establishment and operation would be permitted under section 5155 of the Revised Statutes for a national bank; or

"(B) a State branch or agency, with the approval of the Board and the appropriate regulatory authority of the State, in any State outside its home State to the extent that such establishment and operation would be permitted under section 18(d) of the Federal Deposit Insurance Act for a State bank.

as if the foreign bank were a national bank having its main office, or a State bank chartered, in the home State of the foreign bank.

"(2) CRITERIA FOR DETERMINATION.—In approving an application under paragraph (1), the Board and the Comptroller of the Currency—

"(A) shall apply the standards for establishment of a foreign bank office in the United States under section 7(e); and

"(B) may not approve an application unless it determines that the foreign bank's financial resources, including the capital level, are equivalent to those required for a domestic bank to be approved for branching under section 5155 of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act and, in the case of the first branching application by such foreign bank, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Comptroller of the Currency or the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed under section 5155 of the Revised Statutes and by section 18(d) of the Federal Deposit Insurance Act can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

"(4) ADDITIONAL AUTHORITY FOR INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS.—Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside of the foreign bank's home State if—

"(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act.".

"(b) TREATMENT OF UNITED STATES BANKING SUBSIDIARIES.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following:

"(d) TREATMENT OF UNITED STATES SUBSIDIARY OF A FOREIGN BANK.—A foreign bank that has a domestic subsidiary within the United States may establish Federal and State branches and agencies outside its home State to the extent permitted under section 5155(d) of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act.".

(c) HOME STATE DETERMINATIONS.—

"(1) METHOD OF DETERMINING.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

"(A) by striking the phrase "in the State in which such branch or agency is located"; and

"(B) by adding at the end the following sentence: "For the purposes of section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5(c).".

"(2) SINGLE STATE DETERMINATIONS.—Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 3103(c)) is amended to read as follows:

"(c) DETERMINATION OF HOME STATE OF FOREIGN BANK.—For the purposes of this section—

"(1) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than 1 State, is the 1 of those States elected of the foreign bank, or, in default of such election, by the Board; and

"(2) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in only 1 State, is that State.".

SEC. 305. PERMISSIBLE CONSOLIDATION.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following subsection:

"(h) PERMISSIBLE CONSOLIDATION.—

"(1) IN GENERAL.—Except as provided in subsection (d)(1), a bank holding company having subsidiary banks located in more than 1 State may combine 2 or more of such banks into a single bank by means of merger, consolidation, or other transaction on or after 18 months from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. Notwithstanding any other provision of Federal law or any provision of State law, any consolidation effected in accordance with this subsection shall be permissible within a State as of 18 months after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, unless such State has enacted a law in accordance with section 5155(d)(2)(A) of the Revised Statutes or section 18(d)(5)(A) of the Federal Deposit Insurance Act that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(2) ADDITIONAL BRANCHES.—The consolidated bank may, subject to compliance with all applicable Federal or State laws relating to the establishment, acquisition or operation of a branch, establish, acquire and operate additional branches at any location where the consolidate bank or a preexisting bank could, if they had not been parties to such consolidation, have established or acquired and operated a branch, unless precluded by any provision of State law in existence on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(3) EFFECT OF STATE PROHIBITION OF BRANCHING.—If, during the period beginning 18 months from the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and ending on the expiration of 3 years from such date of enactment, a consolidation authorized by paragraph (1) is effected resulting in the conversion of a bank into a branch located in a State which, after such consolidation, has enacted a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State, then such branch shall, under regulations of the Federal or State banking authority having jurisdiction of the bank prior to its conversion into a branch, be promptly converted bank back into the bank as it existed prior to such consolidation.

"(4) APPLICABLE LAW.—Any branch of a national bank established or acquired in connection with a consolidation or other transaction under paragraph (1) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was a national bank situated in that State.".

Mr. VENTO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The CHAIRMAN. Under the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. BEREUTER. Mr. Chairman, if no one is in opposition, I ask unanimous consent to claim the 15 minutes in opposition.

The CHAIRMAN. Is any Member in opposition to the amendment?

Is there objection to the request of the gentleman from Nebraska?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, pursuant to the unanimous-consent request Friday, November 1, 1991, I have submitted a modified version of my amendment at the desk. I have asked that the reading of the amendment be dispensed with.

Mr. Chairman, I am offering this amendment today with Congressman BEREUTER, the chairman of the full Banking Committee, Mr. GONZALEZ, the ranking minority member, Mr. WYLIE and other members of the Banking Committee. I would like to thank them and their staffs for their cooperation on this amendment.

This amendment is a bipartisan consensus amendment marked out by myself and Mr. BEREUTER. It is a compromise between those members such as myself who would have preferred the

more restrictive opt in alternative, and those members such as Mr. BEREUTER who advocate an opt out, and those members such as Mr. WYLIE, who sought to maintain the original administration position. I want to thank the members involved in the discussions about this matter for their cooperation in reaching this compromise.

This compromise is a fair deal for States, for banks and for consumers.

Under the consensus amendment, States will be provided with 3 years to elect to opt out of interstate branching. States will also be permitted to establish nondiscriminatory laws that cover branches on such crucial consumer concerns as fair lending, consumer protection, and public filing disclosures. This amendment also retains the committee-reported provisions on the Community Reinvestment Act and credit making by out-of-State branches.

The Vento-Bereuter amendment provides the banks with certainty. Under the compromise, banks will be able to branch in a State in 3 years unless that State opts out of the system. Interstate banking will be permitted nationwide in 18 months and after the 18 month period, banks will also be able to consolidate existing free-standing banks as well as those banks for which an acquisition application has been filed by the date of enactment.

Mr. Chairman, one of the major underpinnings of the administration's banking proposal is interstate branching. The administration claimed that such branching would realize millions and millions of dollars for the banks and be the difference between success and failure.

The issue is not so crystal clear. Branching is not the panacea that the administration claims. The savings will not be as great as the administration claims and there are potential pitfalls.

To be certain, the banks that are currently well managed will succeed and grow under branching. But for those banks that are not well managed or that already have bad loan portfolios, branch banking is not a magic wand that will cure those ills. That is why the safeguards in the Vento-Bereuter amendment are so essential. Only well managed, healthy banks will be able to branch under the compromise amendment.

In its blind embrace of branching, the administration has run roughshod over State rights by precluding any role for the States to opt out of the system or to impose responsible controls on branch operations. The Vento-Bereuter amendment restores the appropriate State role in a workable, reasonable manner.

Mr. Chairman, I urge my colleagues to support this bipartisan compromise. The amendment has broad support including the National Governors Association, the American Bankers Association, the Conference of State Bank Supervisors, the Consumer Federation of America, and the Department of the Treasury. I urge your vote for the amendment.

Mr. Chairman, I reserve the balance of my time.

□ 1230

Mr. BEREUTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the Vento-Bereuter amendment, and urge my colleagues to adopt the amendment.

Mr. VENTO and I were joined in filing this amendment by distinguished Banking Committee members ANNUNZIO, KLECZKA, LEACH, NUSSLE, CARPER, GILLMOR, and THOMAS and the amendment is now supported by the distinguished chairman and ranking member of the Banking Committee, the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Ohio [Mr. WYLIE] respectively.

By way of background, this Member notes that if enacted, title III of H.R. 6 would repeal the Douglas amendment to the Bank Holding Company Act to authorize full nationwide banking for bank holding companies and repeal the McFadden Act to allow interstate branching for banks.

The amendment is a compromise amendment reflecting a number of concerns and viewpoints, particularly with respect to the ability of banks to branch across State lines. In summary, our amendment would give States an opportunity to decide whether to rely on the interstate branching structure contained in H.R. 6, or opt-out of the framework.

Specifically, the amendment would make no change in the fundamental direction of the interstate banking provisions in H.R. 6. It does, however—

Reduce the delay of interstate banking from 3 years to 1½ years after date of enactment;

Require that banks entering a State have to comply with all State laws pertaining to community investment, lending—for example, the amendment also requires the Comptroller of Currency to check Community Reinvestment Act compliance of national banks seeking to expand into other States, but no additional CRA requirements are imposed;

Allow branching based on State law—the amendment further stipulates that, except for existing law as in the case of Illinois and Arkansas, a State can't require acquisition of a bank more than 5 years old;

Establish an opt out-opt in window for 3 years after date of enactment, as found in the Senate bill. It also specifies that even if a State has opted out, it can come back into full interstate branching even if the 3 year time frame has expired. Further it specifies that if a State opts out, banks located in the State will not be able to branch into another State;

Set concentration limits—national limit of 10 percent of insured depository institution assets and a limit of 30-percent insured depository institution assets at State level—although a State can waive that requirement;

Allow existing banks to convert to branches within 18 months after date of enactment—consolidation language;

Forbid a State from imposing requirements on potential acquisitions not imposed on in-State banks;

Allow a State to apply its own laws if it opts out—the amendment specifies the kinds of State laws that would prevail unless specifically preempted—e.g., intrastate branching, CRA, fair lending, community reinvestment.

In my view, while Congress can set Federal standards, States need an opportunity to examine the proposed changes in the general area of interstate banking and an opportunity to opt out.

Nearly all States allow either some sort of interstate banking or branching by depository institutions, but they also impose their own requirements, based on local conditions and markets, such as—method of entry, application procedures, reporting requirements, and requirements for community investment and economic development activities.

Why an opt-out rather than an opt-in?

In my view, an opt-out presents the most equitable solution to allowing States a chance to consider nationwide banking and branching, while still setting a Federal standard for federally insured depository institutions.

Given that 48 States allow some form of interstate banking, and others have specific laws pertaining to branching, an opt-in approach will only complicate, rather than simplify, the existing interstate branching and banking structure.

Further, the potential benefits, as well as the costs of permitting full interstate branching, are not so great as to warrant a State review. Most importantly, an opt-out rather than opt-in would require States to address the issue rather than avoiding the topic. If the House adopts an opt-in amendment—that may follow this amendment—it will accomplish very little in moving the Nation along in the active consideration and substantial implementation of nationwide branch banking.

I doubt whether even a half dozen States would opt-out during this 36 month period, but State legislatures ought to be given the opportunity to consider having their State opt out. That, my colleagues, is a privilege we in the Congress ought to be pleased to give State legislators—a chance for ac-

tion on the issue rather than just blaming Congress for forcing interstate branch banking upon their States. I ask my colleagues isn't that opportunity to act rather than simply complain an option it would really be a pleasure to offer them?

I stress that our amendment, crafted with considerable care over several weeks, with the benefit of observing Senate action, has taken into consideration a whole range of concerns and desires, including:

Those of the administration, those of State bank regulators, those of the banking industry—ranging from small institutions to regional and larger banks—and those of State governments—note: The National Governors Association and the Conference of State Bank Supervisors supports the Vento-Bereuter amendment.

As a result of our work on this amendment, the American Bankers Association now supports the amendment, and I understand that the Treasury Department has reversed their earlier mild opposition to the opt out approach since the concept was first considered in the Banking Committee.

This legislation must give States the option of not participating in the bill's interstate branching provisions—rather than superimposing the new interstate branching law upon them.

In some States, such as this Member's home State, Nebraska, mandated interstate branching is still a major concern among some of our citizens. States that have established branching laws have also spelled out under what conditions that branching can occur.

In conclusion, this Member urges adoption of the amendment:

It is a compromise that will generally continue to allow banks to consolidate their operations, thereby reducing operational costs,

It will continue to adequately capitalized banks to acquire other banks, and

It will still grant some time for States, through their legislative bodies, to examine what is most appropriate for them.

Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. WYLIE], the distinguished ranking member of the full committee.

Mr. WYLIE. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the Vento-Bereuter amendment. Both the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] have worked very hard to bring to the floor a compromise. Personally, I would have preferred a straight opt-out amendment, but this is a good amendment. It is a good compromise, and as the gentleman from Nebraska [Mr. BEREUTER] said, he thinks the administration is in support of the amendment.

I can tell him with assurance that the administration is in support of the amendment and urges adoption. One of the reasons the Treasury was against the amendment originally was that there was no antidiscrimination language included, but that has been taken care of now.

As I have said numerous times, I believe that permitting nationwide banking and branching is one of the most important reforms that we are making in this bill. It is good for the banks. It is good for the customers. It is good for our economy. I think it will help prevent bank failures.

But due to the concerns of the States, this amendment will let them opt out of branching, if they so choose. I think there are only four States which do not now allow interstate branching or banking of some sort. Due to the concerns of the States, this amendment will let them opt out, branching, in their own way and in their own time.

But due to their concerns, we did put in some safeguards, and I think that most of the States now, when they evidence some concern about the opt-in provision, would now support this opt-out provision. And I think the gentleman from Nebraska did make that point very well.

Under the compromise, we will permit nationwide banking in 18 months, nationwide branching in 3 years, and 3 years for the States to opt out. I make that point. They will have 3 years to opt out. They do not have to drop dead on the passage of the bill. That was one of the objections, I think, to my original opt-out amendment. I can understand where they are coming from.

States could, however, opt out sooner if they so desire. Existing banks will be able to consolidate their operations in the branches within 18 months. Out-of-State banks will be subject to State law in important areas such as consumer protection, community reinvestment, and fair lending. States will be able to condition the entry of out-of-State banks to buying existing institutions. That is another important provision in here, but with reasonable limits on this power.

Mr. Chairman, I urge Members to vote for the Vento-Bereuter amendment.

Mr. BEREUTER. Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. GONZALEZ], chairman of the committee.

Mr. GONZALEZ. Mr. Chairman, I certainly want to thank the gentleman from Minnesota [Mr. VENTO] and also thank him for having worked out and forged this compromise. This is a compromise. The amendment provides for interstate banking and branching in what I would say in an effective and balanced way.

Interstate banking and branching provide banks with the necessary efficiencies and geographic diversification to help banks be stronger. The fact of the matter is that this will continue to be an issue, but I thank that since the advent of such things as the instantaneous electronic communication, the days of the rigid State border barriers are doomed. It is just a matter of how, from the public interest, we can protect the greatest interests of the greatest number.

This amendment provides a needed balance between profitability and the important interests of the various States by providing States with the ability to determine how and to what extent banks can branch into their State.

The amendment grants States, such as my own home State of Texas, a latecomer, to doing away with unitary banking as well as providing for some form of interstate, and that legislature meets every 2 years. So this bill, this amendment would give the time necessary to opt out of interstate branching, if the legislature desires.

It also gives host States the ability to require out-of-State banks to make loans in the host State, which I think is the main objective.

So with that, I want to thank the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I reserve the balance of my time.

Mr. BEREUTER. Mr. Chairman, I yield 3 minutes to the gentleman from Wyoming [Mr. THOMAS], a member of the Committee on Banking, Finance and Urban Affairs who has been very active in this legislation.

Mr. THOMAS of Wyoming. Mr. Chairman, of all the provisions in H.R. 6, the interstate branching provisions do cause me and folks in my State some concern.

My experience with the dual banking system in Wyoming has been positive. Since I lean toward local government and States' rights, I find it easy to subscribe to the idea of a dual banking system.

Full nationwide interstate branching will result in a new banking system, diversified into all areas of the country.

The State's role as a regulator must not be overlooked. They can add a good deal of insight when looking at concentration levels, State laws and regulation to protect consumers, and local economic development needs.

The Vento-Bereuter amendment gives the States a 3-year opt-in/opt-out window for interstate branching.

If there is such a thing, this is indeed a good compromise. The current bill calls for immediate interstate branching with no State input. Let's not be left with this.

It allows States to decide whether or not to take part in interstate branching.

In addition, it yields to States who can impose nondiscriminatory condi-

tions upon the operation of out-of-State banks within their borders.

If you support the notion of State rights and the benefits of their input, I would urge you to vote for this amendment.

Let us not be left with the current language currently in title III.

□ 1240

Mr. BEREUTER. Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. KLECZKA], one of the major participants and authors of the amendment.

Mr. KLECZKA. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I would like to compliment the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] for the leadership they have shown in developing a compromise on the interstate branching issue.

I was proud to work with them on this matter in the House Banking Committee, where we were not able to prevail. I am happy to join today in strongly supporting this amendment, which now has the support of the Consumer Federation of America, the Treasury, the Conference of State Bank Supervisors, and the American Bankers Association.

The bill initially proposed to the Congress by the administration provided for unrestricted interstate branching, a radical change in the law which would lead, almost certainly, to a distinctly centralized banking system.

Put in simple terms, it reflected the philosophy of this administration when it comes to banking which is: Bigger is better.

In my view, interstate decisions should be made with the advice of the various State legislatures. They should not be made in New York or Washington DC.

Without the Vento-Bereuter amendment, States would have no control over bank decisions to branch within their borders.

When it comes to banking, communities in Wisconsin and elsewhere need institutions which seek to establish roots, not branches.

If we do not adopt the Vento-Bereuter amendment, we will certainly see a sharp reduction in the number of banks, which now number approximately 12,000 nationwide. It could well signal an end to traditional community banks, which have served credit needs, especially of smaller businesses, particularly well for many years.

Without appropriate decisionmaking in the various States, we face a prospect that lending and other policy decisions once made by neighbors will be made by people who we do not know, and never will know.

Lending and other policy decisions how made at the local level may be made at a distant corporate headquarters. In some instances, essential decisions may be made overseas at a headquarters of a parent bank embarked on a U.S. branch bank strategy.

The Vento-Bereuter amendment strikes an appropriate balance on this matter. I am pleased it retains an amendment I added to H.R. 6 in the House Banking Committee which requires the appropriate Federal financial regulator to prepare a separate, written evaluation of an institution's CRA performance in each State in which the institution maintains branches. This provision is essential if we are to ensure that banks enter an area not simply to gather deposits, but also to make loans to the community.

The Vento-Bereuter amendment allows nationwide interstate banking after 18 months and establishes a 3-year window for States to opt out of interstate branching. In addition, the amendment set reasonable concentration limits of 10 percent nationwide and 30 percent statewide to protect against undue consolidation by a particular institution.

I urge support for the Vento-Bereuter amendment.

Mr. BEREUTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Iowa [Mr. NUSSLE], a first-term active Member.

Mr. NUSSLE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today in support of the Vento-Bereuter amendment to allow States to play a role in the decisions regarding interstate branching. H.R. 6, as reported out of the Banking Committee, repeals the Douglas amendment to the Bank Holding Company Act and the McFadden Act authorizing full nationwide banking and interstate branching respectively.

These changes to decades-old banking laws will streamline the existing patchwork of interstate banking laws and provide the opportunity for many banks to consolidate their operations to strengthen their capital positions, which is desperately needed in the industry at this time. Those are laudable goals. I do have concerns, however, over the level of participation for States under this bill.

I believe State governments should play a significant role in structuring a system of nationwide branching. The amendment offered by Congressmen VENTO and BEREUTER is the best method of achieving this goal. This amendment forces States to closely examine their options with regard to interstate branch banking and determine whether or not this system will be beneficial to their banks, consumers, and the economy of the State. I urge my colleagues to support the Vento-Bereuter amendment.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Delaware [Mr. CARPER], a member of the committee and a cosponsor of the amendment.

Mr. CARPER. Mr. Chairman, I thank the gentleman for yielding time to me. The amendment that is before us at this moment is similar, quite similar, in fact, to an amendment that almost prevailed in the full Committee on Banking, Finance and Urban Affairs. We came very close to passing something along these lines. I am pleased to have had the opportunity to work with the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] and others within the coalition since that markup to bring us together on what I think is both good public policy and policy that is likely to prevail here today.

Whether we like it or not, interstate banking is occurring in our country and prevails in virtually all States today. Unfortunately, the version of interstate banking that is taking place in the United States these days is not the most efficient, it is not the most economical, neither for banks nor, ultimately, for consumers. It turns out probably it is the most expensive way to go to interstate banking.

The language in the bill that is before us today without this amendment frankly is not sensitive to the rights of States to have a voice and to say whether or not they believe it is good for them to participate in interstate branching in this country. If a State, under this amendment, wants to stay out of interstate branching, if they want to be excluded from interstate branching, to preclude others from coming in, all a legislature and a governor have to do is simply to pass a law and say "We opt out. We do not want to play at this point in time." Ultimately, if they decide to change their minds and elect at some future date to participate in interstate branching, they may do that. This approach is opt out. It is a good approach. My guess is that most States will not elect to opt out. My guess is most States will elect to participate in interstate branching, but for any who want to opt out they will have with this amendment the opportunity to opt out.

The amendment is a very good compromise between those who frankly believe interstate branching is good and would like to see it take place and those who have some grave concerns about interstate branching.

This is a compromise that says we are going to move toward interstate branching, but if a State has some overriding concern that would compel them to keep out at this time, they may voice their opinion and exercise the right of their State to opt out.

Mr. VENTO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as has been indicated, this amendment and this topic has been before the Committee on Bank-

ing, Finance and Urban Affairs for many years. It has been well over 50 years since restrictions on interstate banking and interstate branching have been a part of the fabric of our law. Trying to deal with that and deal with the dual regulatory system between the States and national Government is a very difficult matter on which to craft public policy and find a path of compromise. We have successfully done that and a lot of Members deserve credit.

I know several years ago I labored on an opt-out amendment in the Banking Committee. We are going to hear more discussion today on an opt-in amendment. The basic difference I think is that in the opt-out amendment the States are required, they must address the issue in an affirmative manner if in fact they want to exercise certain State responsibilities as opposed to, for instance, not taking any action under the amendment that will be offered by my good friend and colleague, the gentleman from New Mexico [Mr. RICHARDSON].

I think the Vento amendment before us now is the best way to function, to require a positive action by States, an affirmative action in terms of making a change in terms of not participating in interstate banking or interstate branching.

□ 1250

The option of interstate banking and interstate branching should enhance the profitability of banks. It does—the banks claim—provide for greater diversity. It does provide certain economies, and I know that our compromise has dealt with all of the different possibilities in terms of interstate banking and interstate branching.

As an example, varied regions that have interstate banking, the sequence that we are proposing in the amendment before the House is to move forward in terms of permitting those powers to devolve to the specific financial institutions, it is an orderly process. The amendment has been given a lot of thought and a lot of support. As I said, it is supported by the Consumer Federation of America, the American Bankers' Association, the State Bankers' Supervisors' Association, and, of course, numerous Members of Congress. I appreciate their support and the efforts they have made to weld this compromise, an important part of our bill.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. BEREUTER. Mr. Chairman, I yield 1 minute to the gentleman from Iowa [Mr. LEACH], a Member who has also been involved in preparing this compromise.

Mr. LEACH. Mr. Chairman, let me just say that this is a very thoughtful compromise.

I would like to ask one question of the two gentlemen if I could.

My office just received this morning a phone call from the office of the multistate tax commission that represents State tax commissioners: We, as you know, in another portion of this bill have carefully written a compromise that keeps the tax liabilities for banks at the States where profit is made. There apparently is a bit of uncertainty the way this is written that it might impinge upon that principle.

I am right, am I not, that there is no intent to overthrow that principle in this amendment?

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. It is not our intent to modify the method of taxation through the changes that we are making in interstate banking or interstate branching in this measure or amendment before us.

Mr. LEACH. That was my understanding. Is that the understanding of the gentleman from Nebraska?

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, yes, it is my understanding.

Mr. LEACH. Mr. Chairman, I think it is good to have that in the RECORD. Let me just say that I think the gentleman from Minnesota and the gentleman from Nebraska did a wonderful job crafting this compromise.

Mr. BEREUTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to thank all the gentlemen previously mentioned by this Member, particularly the distinguished gentleman from Minnesota [Mr. VENTO], who have been involved in drafting this compromise. It has been my pleasure to join them in the effort.

Mr. Chairman, I urge my colleagues to support the Vento-Bereuter opt-out amendment.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. MORAN. Mr. Chairman, I rise in support of the amendment offered by Representatives BRUCE VENTO and DOUG BEREUTER. This amendment would address many of the concerns I had on interstate branching with the original bill that was approved by the House Banking Committee.

First, it gives the States the option to opt out of interstate branching. I do not believe Virginia will follow this course, but this State right should not be preempted by the Federal Government.

Second, by allowing States the authority to establish the requirements on out-of-State banks that want to branch in-State, the amendment will help preserve the current dual banking system. Most of the innovative banking services we have witnessed over the past two decades, such as ATM machines and NOW accounts, evolved at the State level. Federal legislation should not stifle State innovation.

Mr. Chairman, the Federal financial regulatory agencies could learn a thing or two from Virginia's bank supervisor. Mr. Sidney A. Bailey is a man of integrity who fought hard to close troubled institutions when the Federal regulators chose to look the other way. We should not undermine a State like Virginia from establishing conditions that will ensure the safety and soundness of Virginia institutions.

Third, by setting concentration limits on the amount deposits banks can hold in any one State, the amendment addresses my concern that interstate branching will create a rash of bank mergers and acquisitions whose end result will be large megabanks that are unresponsive to local needs.

Mr. Chairman, this is a good amendment, and I am pleased to support it.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from Minnesota [Mr. VENTO].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. VENTO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered

The vote was taken by electronic device, and there were—ayes 366, noes 4, answered "present" 1, not voting 62, as follows:

[Roll No. 367]

AYES—366

Abercrombie	Callahan	Durbin
Ackerman	Camp	Early
Allard	Campbell (CA)	Eckart
Anderson	Cardin	Edwards (CA)
Andrews (ME)	Carper	Edwards (OK)
Andrews (NJ)	Carr	Edwards (TX)
Andrews (TX)	Chandler	Emerson
Annunzio	Clement	English
Anthony	Clinger	Erdreich
Applegate	Coble	Espy
Archer	Coleman (MO)	Evans
Armey	Coleman (TX)	Ewing
Aspin	Collins (IL)	Fascell
Atkins	Collins (MI)	Fawell
AuCoin	Combest	Fazio
Bacchus	Condit	Feighan
Baker	Conyers	Fields
Ballenger	Costello	Fish
Barnard	Coughlin	Flake
Barrett	Cox (CA)	Foglietta
Barton	Cox (IL)	Frank (MA)
Bateman	Coyne	Franks (CT)
Beilenson	Cramer	Frost
Bennett	Crane	Gallegly
Bereuter	Cunningham	Gallo
Berman	Darden	Gaydos
Bevill	Davis	Gejdenson
Bilbray	de la Garza	Gekas
Bliley	DeFazio	Geren
Boehlert	DeLauro	Gibbons
Boehner	DeLay	Gilchrest
Bonior	Dellums	Gillmor
Boucher	Derrick	Gilman
Boxer	Dicks	Glickman
Brewster	Dingell	Gonzalez
Brooks	Donnelly	Goodling
Broomfield	Dooley	Gordon
Browder	Doolittle	Goss
Brown	Dorgan (ND)	Gradison
Bruce	Dornan (CA)	Grandy
Bunning	Downey	Gunderson
Burton	Dreier	Hall (OH)
Bustamante	Duncan	Hall (TX)

Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
Lagomarsino
Lancaster
LaRocco
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Luken
Machtley
Markey
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (VA)
Penny
Perkins
Peterson (FL)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Roberts
Roe
Roemer
Rogers
Rohrabacher
Rostenkowski
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Sanders
Sangmeister
Santorum
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stark
Stearns
Stenholm
Stokes
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Traficant
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Waxman
Weber
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—4

Herger
Johnston
LaFalce
Sarpalius

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—62

Alexander
Bentley
Bilirakis
Borski
Bryant
Byron
Campbell (CO)
Chapman
Clay
Dannemeyer
Dickinson
Dixon
Dwyer
Dymally
Engel
Ford (MI)
Ford (TN)
Gephardt
Gingrich
Green
Guarini
Hatcher
Holloway
Hopkins
Hyde
Lantos
Laughlin
Levine (CA)
Lowery (CA)
Lowey (NY)
Manton
Marlenee
McCollum
McHugh
Michel
Mink
Molinari
Mrazek
Neal (MA)
Ortiz
Payne (NJ)
Pease
Pelosi
Peterson (MN)
Rangel
Ray
Ritter
Ros-Lehtinen
Rose
Savage
Sikorski
Slaughter (VA)
Smith (TX)
Stallings
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Towns
Traxler
Weldon
Wolpe

□ 1311

Mr. ALLARD changed his vote from "no" to "aye."

So the amendment, as modified, was agreed to.

PERSONAL EXPLANATION

Mrs. LOWEY of New York. Mr. Chairman, due to mechanical difficulties on the plane on which I returned to Washington, I unavoidably missed the vote on the Vento-Bereuter amendment earlier today. Had I been present, I would have voted "no."

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. RICHARDSON

Mr. RICHARDSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RICHARDSON: Page 187, beginning on line 1, strike sections 302, 303, 304, and 305, through page 203, line 11 and insert the following (and redesignate the subsequent sections and conform the table of contents accordingly):

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS AND STATE BANKS.

(a) NATIONAL BANKS.—Section 5155 of the Revised Statutes (12 U.S.C. 26) is amended by adding at the end the following new subsection:

"(i) INTERSTATE BRANCHING.—

"(1) IN GENERAL.—Notwithstanding any other subsection of this section, a national bank, with the approval of the Comptroller of the Currency, may establish and operate a branch at any location in any State other than the State in which the main office of such bank is maintained if the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute of law of such State, by language to that effect and not by implication.

"(2) SUBJECT TO STATE LAW REQUIREMENTS.—The establishment and operation of any branch of a national bank under paragraph (1) shall be subject to any requirement, condition, or limitation established under or pursuant to the law of the State in which the branch is (or is proposed to be) located.

"(3) SUBJECT TO CAPITAL REQUIREMENTS.—A national bank may not establish or operate any branch under paragraph (1) unless it is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ratio for each relevant capital measure.".

(b) STATE NONMEMBER INSURED BANKS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) STATE NONMEMBER INSURED BANK BRANCHES IN OTHER STATES.—The Corporation may not approve the establishment and operation of any branch of a State nonmember insured bank at any location in any State other than the State in which such bank is chartered, unless—

"(A) the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute of law of such State, by language to that effect and not by implication;

"(B) the establishment and operation of the branch is carried out in accordance with all requirements, conditions, and limitations established under or pursuant to the law of the State in which the branch is (or is proposed to be) located; and

"(C) such bank is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ratio for each relevant capital measure.".

SEC. 303. INTERSTATE BRANCHING AND BANKING BY FOREIGN BANKS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a foreign bank which engages directly in the business of banking, with the approval of the appropriate Federal banking agency, may establish and operate a branch at any location in any State other than the State in which the main office of the foreign bank is maintained if the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute law of such State, by language to that effect and not by implication.

(b) SUBJECT TO STATE LAW REQUIREMENTS.—The establishment and operation of any branch of a foreign bank under subsection (a) shall be subject to any requirement, condition, or limitation established under or pursuant to the law of the State in which the branch is (or is proposed to be) located.

(c) SUBJECT TO CAPITAL REQUIREMENTS.—A foreign bank may not establish or operate any branch under subsection (a) unless it is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ration for each relevant capital measure.

(d) FOREIGN BANK DEFINED.—For purposes of this section, the term "foreign banks" has the meaning that term has in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

The CHAIRMAN. Under the rule, the gentleman from New Mexico [Mr. RICHARDSON] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I am opposed to the amendment offered by the gentleman from New Mexico.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes at the appropriate time.

Mr. RICHARDSON. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, we find ourselves today on the House floor debating bank reform legislation because the banking industry and our economy are in deep trouble, and both have been badly damaged by a decade of easy credit and mismanagement. Today, we are paying the price for that financial reckless-

ness and face some tough choices on how to correct those excesses and get our banking system and economy back on its feet.

I hope we can make some improvements to this bill in order to provide a framework within which sound lending practices and good bank management are restored. If that cannot be achieved, then it would be a grave mistake to expand powers and allow banks to get into new markets and riskier ventures. In its current form, I am not convinced that H.R. 6 restores that kind of market discipline to the system. Rather, this legislation, and specifically its interstate branching provisions, is rewarding failure by throwing a life preserver to precisely those banks that have gotten us into so much trouble—to those banks whose overaggressive lending practices and blind zeal for higher earnings now threaten the soundness of the entire system.

With the industry in such poor health because of the deteriorating condition of big banks, Congress should not be taking any steps to make banks bigger and to make the problems worse. Unfortunately, the interstate branching provisions in H.R. 6 would do just that. The problems plaguing banks will not go away by adopting a policy to consolidate the industry and fuel a new wave of mergers.

The House of Representatives just voted to put us down that road in 3-years time, unless the State legislature and Governor of your home State can pass a law to opt-out of the nationwide banking and branching system. While the opt-out approach is better than the original language in H.R. 6, it does not satisfy some legitimate economic concerns of many States, and it weakens the ability that States now have to address issues such as credit availability and local economic investment.

The Richardson-Sarpalius-Slattery amendment is a significant improvement to the original language in H.R. 6 and to the opt-out alternative. Our amendment would allow States to elect on their own to opt-in to the interstate branching system. The amendment also gives States the authority to establish conditions on interstate branches. In addition, should a State make an affirmative decision to allow branching for State and national banks, this expanded power would be granted only to banks that exceed minimum capital requirements.

This capital requirements provision is essential. It will guarantee that only healthy banks are the ones expanding and growing in size. The last thing the Federal Government needs is to allow and, indeed, to encourage the problems of undercapitalized, troubled banks to grow larger through branching. To do so would turn a manageable and relatively minor exposure to the bank insurance fund into a larger, more costly problem for the Federal Government and the American taxpayer.

The State opt-in amendment gives States a choice. It empowers them to make the decision of out-of-State bank entry for themselves. Let individual States determine what its financial needs are and how to go about meeting them. Give them the opportunity to see how interstate branching works in other States and regions. If its advantages are as great as its proponents claim, you can be sure that States will opt-in. If it's fool's gold, Congress will have spared many States, hundreds of banks, and the bank insurance fund from an ill-conceived policy.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to this amendment. We have just adopted the Vento-Bereuter opt-out amendment which, I think, is a good compromise. I think it is a fair compromise. I think it will help us modernize our banking system and recognize market realities.

Mr. Chairman, the amendment of the gentleman from New Mexico [Mr. RICHARDSON] I think is regressive. It slows down what I think is the natural evolution of the banking system; that is, interstate banking. It ignores the market reality. Currently, all but four States, just four States, allow some form of interstate banking.

Mr. Chairman, in my own State of Ohio we have had interstate banking for a long time, and we have one of the strongest banking systems in the whole United States. Even the gentleman's own State of New Mexico allows full nationwide banking. And why is that? Why do they allow it?

Six New Mexico banks failed during the 1980's. Four banks have been closed in the last 13 months. Additionally, the accumulation of problem assets, particularly among the State's largest banks, remains a source of concern reflecting a worsening real estate situation and continuing problems with commercial loan exposure. Among the State's 29 largest banks with more than $100 million in assets, profitability declined dramatically last year. New Mexico's 18 S&L's reported a combined loss of $305 million for 1990, indicating a negative 9 percent average return on assets. S&L's in only two other States, Arizona and Massachusetts, had higher losses last year as measured by average return on assets. The poor performance of the State's S&L's reflects the continuing impact of the collapse of real estate and energy markets.

According to the FDIC, in 1988 New Mexico authorized nationwide nonreciprocal banking to take effect on January 1, 1990. However, a subsequent law, passed in 1989, advanced the nationwide trigger to June 1989. The Vento-Bereuter amendment provides ample protection for States that choose not to allow interstate banking.

□ 1320

The Richardson amendment on the surface appears to move us forward, but in fact it moves us backward. This amendment puts the onus on the States to opt-out even if they already have interstate banking. This requirement needlessly delays recognizing market realities.

The opt-in provision just prolongs the period in which banks will be subject to costly, outmoded, Depression-era banking laws. Although interstate banking is an important issue for State legislators to consider, it might not be as important as balancing the budget, creating jobs, taxation, or education. Consequently, State legislators may put interstate banking on the back burner.

The Vento-Bereuter amendment recognizes these problems and requires the States to opt-out if they do not want interstate banking. This is a far more realistic approach, and I urge that the Richardson opt-in amendment be defeated in favor of the Vento-Bereuter amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. RICHARDSON. Mr. Chairman, I yield 3 minutes to the distinguished cosponsor of this amendment, the gentelman from Texas [Mr. SARPALIUS].

Mr. SARPALIUS. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, if we look at the communities around this country, we find that every community is built on a foundation, and the cornerstones of those communities are their churches, their schools, their local governments, and their banks. Their banks have the ability to loan money to small business, to farmers, to ranchers, and to other businesses within that community to help them survive.

Mr. Chairman, we have an amendment here that really puts in jeopardy the ability for those small rural banks to survive. This is a big bank versus small bank issue. We can look at who supports each side. Big does not always mean it is better. We can look at Wal-Mart, for example, a company that has gone into rural communities, established itself, and forced many small businesses to go under. They do not even utilize the local banks for their own payroll. Big does not necessarily mean it is better.

Mr. Chairman, there is a big difference between opt-out and opt-in. I served in the State legislature in the State of Texas when we debated the issue of interstate banking within that State when our State was suffering a great deal. We decided that the State should make its own decisions in deciding to have local boards, local officers, and whether to operate that bank on a local level, and it has been successful in Texas.

We are now looking at a proposal to take that away. With an opt-in proposal we are giving that right to the States to make that decision as to whether or not they want interstate banking.

Every State in this country is different. I think this ought to be a decision that the State legislatures make. With an opt-out proposal we are telling the big banks to go into rural community, establish a small branch bank, and suck the money out of that local community, and they wind up funneling it to New York or some other large city. And who suffers? The local depositors.

With opt-out, we are then telling the legislature that they can come back in and then decide to close those banks. No State legislature is going to approve of closing banks throughout their State.

I think it is far wiser for this body to give the States the right to address that issue first, before those banks become established.

So, Mr. Chairman, I strongly urge my colleagues to support this amendment and give the States the right to decide whether or not to have interstate banking.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding time to me, and I rise in strong opposition to the Richardson amendment.

The bottom line is that the Richardson amendment, make no mistake about it, would kill any form of interstate banking. And if there is one good thing in this proposal, it is that; it is interstate banking.

We have great divisions in this body about whether banks should be allowed to take on new businesses and how they should get into them. We have great divisions about too big to fail and how that should be handled. But the one place where just about every expert who has studied this issue comes to the same conclusion is that interstate banking is necessary.

I heard my good friend, the gentleman from Texas, talk about Wal-Mart, saying it is a bad thing. Well, I guess we could go back to the days in all of American industry when nothing could cross State lines. Let us have little auto companies, let us have little steel companies, let us have little banks, and let us then have the Japanese, the Germans, the French, and the Koreans roll over this economy in 3 years.

The fact of the matter is that the real benefit to interstate banking lays with the consumer. If a bank in State A can do it better and cheaper, they ought to compete.

The big banks will not always prevail. When the big New York City banks perhaps 15 or 20 years ago were allowed to go upstate, everyone said there would be no more little banks. But the little banks outcompeted a lot of those big banks. That will happen throughout the country, and there ought to be competition.

We have a lot of banks in this country, but they are all stuck in their local markets. They are not competing and giving consumers the break. We need interstate banking for international competitiveness. We need interstate banking to allow the consumer the ability to have the competition he or she needs, so he or she can get the best price. We need interstate banking for the stability of the system.

Mr. Chairman, I strongly urge defeat of this killer amendment.

Mr. RICHARDSON. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the Richardson-Sarpalius amendment, and I will oppose the entire bill when it is up for a final vote.

Mr. Chairman, I rise in opposition to this bill which gives the biggest banks in this country through our so-called Federal financial regulators a right to put both their hands into the pockets of the U.S. taxpayer. Let me enumerate my several reasons.

Foremost, I adamantly oppose increasing six-fold—to $30 billion—the line of credit the Treasury currently extends to the FDIC. Why? Most important, because the bill to extend that credit will ultimately fall on the backs of the American taxpayer. The Bush administration and its friends in Congress who think banks can do no wrong would argue that our taxpayers will never see this bill since it is the banks themselves that will shore up the BIF. I disagree. Already, GAO and CBO contend that the BIF will be bankrupt by the end of 1991. They indicate that by the end of 1992, without a further infusion of funds, the BIF will plummet as far as $11 billion into the red. It takes only a quick study of the sharply increasing trend of bank failures—470-percent increase in the second half of the 1980's over the first—to see that fewer and fewer banks will bear the simultaneously skyrocketing BIF debit. This, Mr. Chairman, is a recipe for disaster. We cannot rely on the failing bank industry to prop itself up. Enter, the American taxpayer.

As we all know too well, this will be the second trumpet call the American taxpayer has answered on behalf of financial industries. The S&L crisis was their first, and it does not present a pretty picture for this look-alike bank bailout. Already Congress and the administration have buoyed up the failing S&L's to the tune of $110 billion and expect to add as much as $115 billion more to that total. Efforts on the part of the Department of Justice to recover funds from the S&L swindlers in major fraud court prosecutions do little to offset that bill. Department of Justice has ordered restitutions in the amount of a mere $384.7 million, only 5.2 percent of the $7.4 billion loss associated with the S&L's they swindled, and just two-tenths of 1 percent of the $215 overall estimated net loss for the bailout. Now the banks are asking for $30 billion more, and leading economists in familiar S&L style predict the bill could mount as high as $200 billion.

The fact that the American taxpayer must foot the bill is glaringly unfair, for several reasons. An old American proverb proclaims "He who dances must pay the fiddler." The banks have danced into a morass of debt through market driven risk taking that exceeded the limits of prudence. Why must the American taxpayer who never even graced the bankers' floor pay their fiddler? President Roosevelt likewise underscored this absurdity during the dark banking holiday in March 1933: "What right have we," he queried, "to tax the American people to insure bank deals any more than to tax them to insure the transactions of any other business?" Would that the present administration could likewise pierce to the fact that the $30 billion recapitalization is an unprecedented move: It puts the U.S. taxpayer behind the follies of our largest banks.

And indeed it is our largest banks who even our smallest taxpayers will be bailing out. A recent article in the Washington Post named a few of the lucky behemoths which will receive hard-earned taxpayer money: Citibank, with over $159 billion in assets and in need of $5½ million quick fix; Chase Manhattan with over $75 billion in assets, looking for $2.9 million more; and Security Pacific with assets of $55 billion and new capital needs at $1.47 million. Compared even to the most ardent credit card user among our taxpayers, these debts are astronomical. Certainly this administration is the reverse of Robin Hood: It robs from the poor to pay the rich.

This willingness to find $30 billion for banks and S&L's is especially disturbing in light of repeated failures on the part of this administration to fund programs that directly benefit our citizens. The most recent transgression in this trail of negligence is the President's veto of two unemployment bills because he did not want to spend down the $5 billion trust that workers funded. This atrocity caps off a historical trend of congressional haggling for just millions of dollars to house our citizens and keep our lands clean. Yet the Bush administration manages to fight for billions of dollars to pay for still another bank bailout. The administration's priorities are painfully clear: Big banks take precedence over the American taxpayer.

So I oppose extending the $30 billion line of credit—this blank check—because the bill—which will go to our largest banks—will land on the back of our taxpayers, who neither deserve it nor receive similar perks from the administration to meet their needs. I also oppose the mechanism in place for funding this $30 billion through borrowing from the Treasury for loss funds and from the Federal Finance Bank for working capital. Financing by borrowing entails paying interest on the borrowed funds. That cost taxpayers $2.8 billion in just the last 2 years in the process of cleaning up failed S&L's. A leading economist from Stanford University indicates that the interest payments may reach $900 billion over the duration of the S&L bailout, nearly tripling its price tag. Treasury Department figures too show that, should

the FDIC fully use and pay back the $30 billion over a 10-year period, we will rack up over $23 billion—$2.4 billion annually—in interest payments to add to the $30 billion tab.

I served 8 years on the Banking Committee. In all this time, I was truly dismayed that no bill—no idea—from the Bush administration nor this Congress offered to take this monumental monkey off the back of the U.S. taxpayers. Alternative proposals were not even welcomed by the committee of jurisdiction. But many were offered—by Mr. LAFALCE, by Mr. TAUZIN, by Mr. WOLPE, by Mr. KENNEDY, by Ms. OAKAR, by Mr. DONNELLY, by Mr. WHITTEN, by Mr. MRAZEK, and myself. I ask this Congress and the Bush administration to go back to the drawing board and seriously consider such alternatives and other creative proposals like them to help heal our Nation's banks at a reduced cost. We in Congress must be as creative in finding solutions as the thrift swindlers and bank dealers were in creating the problems.

In addition to my concerns regarding both the mandating and financing of the $30 billion credit line, I have other concerns with the bill. I oppose the interstate branching provisions in title III on the grounds that it will separate the leadership of the bank from the community which it serves, curbing their ability to understand the community's economic needs, and tempting them to invest local dollars elsewhere when they more properly belong at home. In fact, one of the reasons these big banks are in trouble is because of their ill-advised loans to the Third World, loans not backed up by collateral. Need we more evidence? Interstate branching also may strike hard against the main street communities since a CEO in a skyscraper in New York City will hardly be aware of the needs of the small investor in rural or small town medium size communities.

I am troubled too about the prospect of repealing Glass-Steagall. Though the Gonzalez-Dingell compromise imposes strict firewalls designed to separate the federally insured funds from securities and insurance activities that the new financial services holding companies undertake, I know that no firewall—except for the strictest of provisions—is strong enough to absolutely curtail the greedy from jumping over it. We saw deregulation drive savings and loans into the risky investments that produced their present sorry state. Especially at a time of bank failure when temptations will be greatest, this is no time to fiddle with the walls of Jericho.

Likewise the creation of diversified holding companies that can own both financial service holding companies—and so banks through them—and commercial enterprises will result in an unhappy concentration of economic and financial power. It will also compromise the objectivity of credit judgments on both the part of the banks and their commercial affiliates. To echo Herb Stein of the American Enterprise Institute:

> There is little reason to think that nonfinancial businesses will be more willing to put capital in banks than the ordinary investor would, unless the nonfinancial business sees an opportunity to gain from the connection something other than the return of the equity. This opportunity is likely to mean some form of self-dealing that is illegitimate.

H.R. 6 charges an exorbitant price tag which our taxpayers will undoubtably bear. It proffers uncreative means of funding that bill. It makes possible new abuses associated with interstate banking and expanded powers. In light of these reasons, stand with me for the American consumer, against another bank bailout, and against H.R. 6.

Mr. RICHARDSON. Mr. Chairman, I yield 4½ minutes to the gentleman from Kansas [Mr. SLATTERY], the coauthor of this amendment.

Mr. SLATTERY. Mr. Chairman, when we look at this legislation and look at this amendment, I think we should ask ourselves one basic question: Who can best meet the capital needs of consumers, small businesses, and farmers all across this great country of ours? When we look at the question of who can best capitalize small businesses, I can say as one who started a small business before I ran for Congress that I did not go to Wall Street, I did not go to Citibank, or I did not go to any big bank around the country to find the money to start my business; I went to my local community bank. I hope that we all keep that in mind, because there will be a lot of talk about now devastating it is going to be if we do not unleash the big banks and allow them to go all over this country and get involved in interstate branch banking.

The fact of the matter is, as far as this Member is concerned, the big banks want deposits from many slower growth areas, smaller communities in this country, to finance operations in the fast growth areas of this country. Well, that may make sense if you live in a fast-growth area, but for the slow-growth areas that are capital intensive, like those many communities all across this country that depend on agriculture, it is critically important that we keep that local capital in those local communities.

I would just observe to my friends who do not know who can best meet the capital needs of small business, consumers, and farmers, to just take a look at those who are supporting this amendment, and I would submit that they probably know best who can better take care of their capital needs. So it will not come as a great surprise that most of the agricultural organizations in this country support this amendment. Many of the small business groups in this country support this amendment, including the NFIB. Many consumer organizations, including the Consumers Federation of America, support this amendment. The Association for Retired Persons also supports this amendment. Those are the people we should be concerned about, and those are the people that in my judgment can best determine who will be looking out for them when they have to borrow money, and I hope we are listening to what they have to say on this legislation.

The other point I would make is that a lot of the proponents and supporters of the big bank position on this amendment will argue that we have to do this to be more competitive, but the facts are, I say to my friends, that when these big banks come into the smaller communities, they are going to enjoy one great advantage. It is called too big to fail. That doctrine is going to be in place regardless of what we do with this amendment and the underlying legislation. Although we are making some minor changes in too big to fail, it is basically protected.

□ 1330

So the big banks doing business in the smaller communities are going to be able to say to the depositors there, you can put your money in our facility and you will not have to worry about it, because have you ever seen an example of a big bank failing, like Citicorp, or Chase, or Bank of America.

The answer to that question is going to be no, they have never failed. Too big to fail is going to be in place. It is going to be an enormous advantage for those big banks out there that are saying just give us a level playing field.

It will not be a level playing field, and those big banks are going to be sucking the deposits by the billions out of smaller communities all over this country. And what are they going to be doing with this money? Folks, it is going to go all over the world. Do not kid yourselves about it. It is going to go to Argentina, Brazil, and maybe the Soviet Union.

Mr. Chairman, I say no to that. I say we should keep this capital at home and make sure that that money stays as close to the smaller communities in this country as possible. I say we should keep this money at home. I say we should keep it in the smaller communities that desperately need it, where I believe the 1990's will provide us with enormous opportunities for growth and creation of jobs if we can capitalize those smaller businesses and farmers and other individuals, consumers in the smaller communities all over this country, that desperately need the capital.

Mr. Chairman, I strongly urge Members to support this amendment and support this legislation on final passage if we should adopt this amendment.

Mr. WYLIE. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Chairman, we have just seen a vote of 366 to 4 for the Vento-Bentsen opt-out arrangement. I rise, however, in strong opposition to the Richardson amendment, as its passage will preempt the Vento-Bentsen amendment under the king-on-the-hill rule established by the House Rules Committee for the debate on this series of amendments on interstate branch banking.

Perhaps only a few Members of this body have more small, independent

banks in their district than their Member does. I also think it is fair to say this gentleman was perhaps the most vociferous member in the committee and subcommittee in arguing a concern about capital and decisions being sucked out of States under some forms of nationwide interstate branch banking.

I suggest to Members that while it may be safer for some Members of Congress, including this one, to remain silent on the Richardson amendment, nevertheless we ought to reject it. It is in the national interest to reject it.

Now, the opt-out arrangement that we have just put in place, contrary to what the gentleman from Texas [Mr. SARPALIUS] said, will not cause State legislatures to close down new branches that have come into their State as a result of the passage of this legislation. Interstate branch banking under this legislation does not go into effect for 3 years. During that 3-year period of time State legislatures can opt out—and indeed must opt out if they intend to act—before new interstate branching provisions of this legislation go into effect.

One of the difficulties that we have in this country and the reason we have to look at the national interest as we consider the Richardson amendment is that the Nation's biggest banks and regional money-center banks do not reflect in their customer base, the geographic diversity of the country and similarly do not reflect the industrial economic base of the country. So when we have a problem in the Oil Patch of the Southwest, or in New England as we have right now, banks that have a customer base limited to that particular geographic area of industrial base are in difficulty.

When we have those regional-based difficulties, they fail and result in an extraordinary drain on the BIF of the FDIC.

What our regional money-center banks and big banks need to have the opportunity to do is to branch across this country and give themselves some geographic and industrial diversity. That is one reason why it is important to reject the opt-in amendment. The amendment will also result in legislative chaos; passage of the Richardson amendment will create an even more complicated environment than we now have.

Mr. Chairman, I think the Vento-Bentsen opt-out amendment presents the more equitable solution to allowing States to consider nationwide branching. Given the fact that 48 States allow some form of interstate branch banking right now, and others have laws specifically pertaining to branching, an opt-in provision only will complicate the matter.

Mr. Chairman, I urge Members to reject the Richardson amendment.

Why an opt-out rather rather than an opt-in?

In my view, an opt-out presents the most equitable solution to allowing States a chance to consider nationwide banking and branching, while still setting a Federal standard for federally insured depository institutions.

Given that 48 States allow some form of interstate banking, and others have specific laws pertaining to branching, an opt-in approach will only complicate, rather than simplify the existing interstate branching and banking structure. It is a gigantic step backward and will result in chaos in State legislatures and banking.

Further, the potential benefits, as well as the cost of permitting full interstate branching are not so great as to warrant a State review. Most important, an opt-out rather than opt-in would require States to address the issue rather than avoiding the topic. If the House adopts an opt-in amendment, that may follow this amendment, it will accomplish very little in moving the Nation along in the active consideration and substantial implementation of nationwide branch banking.

Mr. Chairman, I urge my colleagues to reject the Richardson amendment.

Mr. RICHARDSON. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Chairman, I rise in support of the Richardson-Sarpalius amendment. I think this amendment comes closest to giving States their existing rights to regulate their own banking system. It does not prevent interstate banking. It simply puts the burden of proof on determining at the State level when interstate branch banking is appropriate and under what rules and regulations. It gives States the ability to determine how to allow interstate branching in their State.

One of the opponents of this amendment has made the point about the Germans and the Japanese and the French and some of our other international banking competitors. I would simply say that in Rio Vista, TX, I do not believe the Japanese, the French, the Germans, or any other international bank is going to come into that community.

The Stretch Smith family, however, has been operating a bank, what is called the Cow Pasture Bank, in Rio Vista for over 75 years. I want to give them the ability to continue to do that.

Mr. Chairman, please vote for the Richardson amendment.

Mr. WYLIE. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Chairman, I want to thank the gentleman from Ohio [Mr. WYLIE] for enabling me to speak on this issue.

Mr. Chairman, first I would like to congratulate the efforts of the gentleman from Minnesota [Mr. VENTO], and the gentleman from Nebraska [Mr. BEREUTER], both individuals from essentially rural States in America who have put together a compromise that was just overwhelmingly adopted by this body, which I think balances appropriately the interests of those in favor of unlimited interstate branching and the interests of the States in regulating branches of national banks. This is an appropriate compromise.

Mr. Chairman, believe me, the amendment that is being presented right now is an inappropriate compromise, and I would urge its defeat.

Mr. Chairman, let me give an example of why national interstate branching is so important. Let us take a look at Texas.

In Texas in 1980 the top 10 banks were very well capitalized, highly capitalized. They were known throughout the Nation for that. They had capital of 8, 10, and 12 percent.

During the 1980's, once the recession struck the oil patch States, 9 out of 10 of those banks failed, 9 out of 10 very healthy banks that should not have failed and would not have failed if they had been part of a larger nationwide network, so that a recession in one geographical area would not bring down all the banks in that area, because they would be supported by banks in a different geographical area.

Mr. Chairman, that is one of the fundamental reasons for interstate branching and why it would help the economy.

Let us take the example my friend the gentleman from Texas [Mr. SARPALIUS] gave about Wal-Mart, that we should not have let Wal-Mart into the small communities because it puts the small businesses out of business.

Mr. Chairman, let me ask a fundamental question: Is it the role of the U.S. Congress to protect small businesses from competition? Or is it the role of Congress to promote competitions? That is what we are here to do today.

Mr. Chairman, I urge defeat of this amendment.

Mr. RICHARDSON. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Florida [Mr. BACCHUS].

Mr. BACCHUS. Mr. Chairman, I rise in strong support of this amendment. I voted for the previous amendment, but I think this one is even better.

When it comes to banking issues, as a member of the Committee on Banking, Finance and Urban Affairs I confess I am a Jacksonian. By that I do not mean Jesse Jackson, I mean Andrew Jackson. I like the dual banking structure. I like to have the State regulators looking over the shoulders and breathing down the necks of the Federal regulators.

Mr. Chairman, State regulators are far from perfect, but it has become clear to me in my tenure, however brief it is, on the Committee on Banking, Finance and Urban Affairs, that Federal regulators are too far from perfect. They watched as the BCCI took over much of our banking system. They

watched as the Bank of New England went down the drain.

Mr. Chairman, I feel much more comfortable with an opt-in provision such as this that would allow the States to make their own decision, as they have always done, that would protect us against the credit crunch, that would protect us against the slipping away of our deposits and decisionmaking in loans.

Mr. Chairman, I strongly support this amendment.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me just say I agree with very many of the premises articulated by advocates of this amendment, but come down in conclusion on the other side. What we are dealing with is much more a matter of degree than kind. With this amendment we are still going to have interstate banking; 46 or 47 of the States have already passed regional or national interstate banking compacts, so what is really at issue is certainty of the law, not whether or not we are going to have interstate banking.

□ 1340

Here let me just mention for those that have advocated this amendment that there is one part of the Vento-Bereuter amendment that is more strict than the gentleman's provision. In Vento-Bereuter we have concentration limits. No bank can have more than 10 percent of the deposit base of the country and there is 30 percent triggering point for State concentration.

I raise this because this is a protection in the statute in Vento-Bereuter that is not in the gentleman's amendment.

Second, let me also stress that in other provisions of the bill, we have higher capital standards required for branch banking than exists in this amendment. And third, I would like to stress that we have a prohibition in other provisions of this bill against deposit production offices being developed that would not serve local lending needs.

My own view is that States should be protected with the rights of how they craft the entrance of interstate branching and banking, but that it is probably better dealt with in Vento-Bereuter than in this compromise. Therefore, even though I agree with the premise of the gentleman who advocated this amendment and probably disagree with the premise of one of the detractors, the gentleman from New York [Mr. SCHUMER], I still come down in conclusion on the side of the gentleman from New York [Mr. SCHUMER] and the gentleman from Ohio [Mr. WYLIE] and hope this amendment is defeated.

Mr. RICHARDSON. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, let me just address some of the concerns raised by my colleague from Ohio and the gentleman from New York [Mr. SCHUMER].

Some of the proponents of the big banks have tried to label this amendment as regressive, as an approach that basically turns back the clock. the contention is inaccurate. We presently operate right now within an opt-in system. This amendment simply maintains the dual banking system and preserves the current role that States play as partners in that system.

My colleague from Ohio mentioned the New Mexico situation. He is not accurate. Yes, several years ago my home State passed a law to allow full nationwide banking, and so have many other States in some form or the other. Nothing in the amendment changes that.

Let me repeat that for my colleagues: Nothing in this amendment affects those States that have already elected to opt in to nationwide banking or those States that already allow branching by out-of-State banks.

In response to the gentleman from New York [Mr. SCHUMER], he would like you to believe that a vote for option is a vote to kill any and all possible attempts to establish less restrictive branching powers. That is also not true. If we look to the example of nationwide banking, the vast majority of States have indeed exercised the opt-in approach available to them under the Douglas amendment and have allowed interstate banking through the bank holding structure. In fact, 48 States presently allow some form of interstate banking.

There is no reason to believe that the opt-in approach will not continue to work. Maybe it will not happen within the 3 years timetable demanded by the big banks, but if the advantages of interstate branching are as wonderful as its proponents claim, you can bet on it that States will exercise their right to opt in.

Mr. Chairman, it is entirely consistent for Members that voted for the previous amendment to now support this one. In essence, we are protecting States from interstate branching by giving consumers choice, giving your local community bank some protection, letting the residents of our own States, when it comes to economic development matters, credit matters, to simply have a say. This is why this amendment is supported by such groups as the National Federation of Independent Business, Consumer Federation of America, AFL-CIO, Independent Bankers.

I urge support for this amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise in strong opposition to this amendment. The amendment that we have just adopted, the opt-out, takes care of any protections that are necessary for State regulation. This amendment is a killer amendment. It kills probably the most essential reform of our bill. Next to the new capital standards, this is probably the most essential reform of our bill. Without an orderly phase-in to interstate banking our system will be frozen in the time and incapable of meeting the needs of a modern economy.

There is really no point to a bill, if we kill interstate banking, which is what this amendment is designed for.

I want to also dispel the myth of consumer protection. What we are doing here is allowing more capital into more States and more diversification of risk in investment. I want to applaud the statement of my colleague, the gentleman from Nebraska [Mr. BEREUTER] and associate myself with his remarks and repeat again the essential point that he made. It is good for his State, Nebraska, and it is good for a State like New Jersey and the Northeast to diversify risk and investment and provide more capital and more help and more credit for all classes of consumers.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Chairman, I, too, rise in opposition to the Richardson amendment. I favored the Vento amendment. In fact, we have interstate banking. Forty-eight States have right now adopted provisions which allow banks to cross State lines.

The difference is, those banks have to create a separately incorporated organization inside the State. That is the difference.

In fact, if we allow interstate branching, what we are doing away with is the need for a separate organization. That is all. Because each State continues to retain its own authority, its own laws and regulations over the branch of that bank in that State. This is not a States' rights issue.

States retain the right to control and regulate each branch inside the State. This is a question of economies of scale. Much has changed in our recordkeeping.

Mr. Chairman, I rise in opposition to the Richardson-Sarpalius amendment on interstate banking. The restrictions on interstate banking and branching adopted over 50 years ago have become a unnecessary burden on the banking industry and, indeed, on the growth of the American economy. The McFadden Act, adopted in 1927, essentially bars federally charted banks from branching across State lines. It also forbids State-chartered banks that are members of the Federal Reserve from branching interstate. The Douglas amendment, adopted in 1970, allows bank holding companies to acquire institutions across State lines, but only with the host State's explicit permission.

Forty-eight States, including my own State of Utah, have passed laws specifically to per-

mit interstate banking. Banks and other financial institutions now operate in a highly competitive and rapidly changing business environment. These States have recognized that interstate banking is an important element of improving the ability of banks to compete effectively in this new business environment. In light of these changes, the real issue presented to this body is not whether banks will be permitted to operate across State lines, but how.

H.R. 6, as reported by the House Banking Committee, establishes a nationwide framework for interstate branching. It repeals the Douglas amendment allowing bank holding companies to acquire banks across State lines regardless of State law. It also provides that within 3 years of enactment, national banks will be allowed to establish branches in any State regardless of State law. Bank holding companies with existing interstate bank subsidies would be permitted to convert these institutions into branches of a lead bank under H.R. 6. This consolidation could occur immediately after enactment of the bill.

Mr. Chairman, I support the liberalization of restrictions on instate branching as amended by Vento-Bereuter to preserve the ability of States to regulate the operation of financial institutions within their own borders. This permits nationwide interstate branching while providing the States with an opportunity to "opt-out" during the 3 year phase-in period. If a State decides not to participate in interstate banking, the amendment stipulates that banks located in that State could not expand into other States. The amendment also permits a State to impose conditions on banks seeking to branch into that State. However, those conditions may not unfairly discriminate against out-of-State banks or bank holding companies.

The Richardson-Sarpalius amendment would permit out-of-State banks to open branches in a State only if that State passes a law specifically allowing them to do so. This eviscerates the most important reform contained in this bill—permitting banks in the U.S. to branch across State lines where they conform with legal requirements under State law. It is important to recognize that interstate branching poses no increased risk to the safety of financial institutions. It also does not benefit "big banks" at the expense of small- and medium-sized banks. Rather, it simply means that a bank operating in one State would no longer need to create a new and very expensive corporate shell in a different State in order to enable it to operate in that State. Instead, a bank could simply open up a branch office in a different State—providing that State had not decided to "opt-out" of interstate branching. These branch banks would be required to operate under the same State laws and requirements that apply to local banks. Again, I remind you that 48 States already permit interstate banking. For those States, interstate branching will cause no disruption to their State banking system.

Mr. Chairman, the principal of States' rights to regulate financial institutions within their boundaries is well served by the "opt-out" approach utilized by the Vento-Bereuter amendment and adopted by this House. It strikes the correct balance between the need to preserve States rights and the need to eliminate unnecessary restrictions on interstate banking and branching. I urge my colleagues to oppose adoption of the Richardson-Sarpalius amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER] to close debate.

Mr. BAKER. Mr. Chairman, underlying the questions of national branching, opting in, opting out, really is a question of competitiveness. The fear that in the marketplace the small independent banker will no longer be able to compete with large national firms bringing their deposit base into our communities.

It just simply is not so. In upstate New York, history shows us that where a very large, well-funded national bank came in to compete with the small, rural community-owned banks, they got their hat handed to them. They had to pull out.

It is an expensive proposition to open up a branch in a market, and they simply will not do it where market demographics do not justify it.

The Federal Reserve and other regulators carefully reviewed the right to branch into someone else's territory. We now look at issues like cross elasticity and all sorts of market demographics in order to determine if the consumer interest will be best served by allowing another entity into the marketplace.

Finally, we give the States the right under the Vento previously adopted amendment to opt out of the system if they think in their State's best interest it is not the step to take.

This is a poorly conceived amendment. Please vote no.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. RICHARDSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 142, noes 250, answered "present" 1, not voting 40 as follows:

[Roll No. 368]

AYES—142

Abercrombie
Allard
Andrews (ME)
Annunzio
Applegate
Aspin
Bacchus
Barton
Bennett
Bevill
Bilirakis
Bonior
Boxer
Brooks
Browder
Bruce
Bunning
Burton
Camp
Carr
Chandler
Clay
Clement
Coleman (MO)
Collins (IL)
Conyers
Costello
Cramer
Crane
Darden
Davis
de la Garza
Dellums
Dicks
Dingell
Dorgan (ND)
Duncan
Durbin
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Espy
Evans
Ewing
Gaydos
Geren
Gillmor
Glickman
Goss
Gunderson
Harris
Hayes (IL)
Hefley
Herger
Hubbard
Hughes
Hutto
Ireland
Jefferson
Johnson (SD)
Jones (GA)
Jones (NC)
Jontz
Kaptur
Kildee
Klug
Lewis (GA)
Lipinski
Lloyd
Long
Matsui
Mazzoli
Meyers
Mfume
Mollohan
Montgomery
Moody
Morella
Murphy
Myers
Nagle
Natcher
Nichols
Oberstar
Obey
Olver
Ortiz
Pallone
Parker
Pastor
Penny
Perkins
Peterson (MN)
Petri
Porter
Poshard
Quillen
Rahall
Richardson
Roberts
Rogers
Rostenkowski
Rowland
Russo
Sanders
Sangmeister
Sarpalius
Schaefer
Schiff
Schroeder
Schulze
Sensenbrenner
Serrano
Shaw
Sikorski
Skeen
Skelton
Slattery
Solomon
Stenholm
Stokes
Swift
Synar
Tanner
Thomas (GA)
Thornton
Torres
Towns
Traficant
Unsoeld
Upton
Vander Jagt
Volkmer
Washington
Weber
Weldon
Wheat
Wilson
Wise
Yatron

NOES—250

Ackerman
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Archer
Armey
Atkins
AuCoin
Baker
Ballenger
Barnard
Barrett
Bateman
Beilenson
Bereuter
Berman
Bilbray
Bliley
Boehlert
Boehner
Boucher
Brewster
Broomfield
Brown
Bustamante
Byron
Callahan
Campbell (CA)
Cardin
Carper
Clinger
Coble
Coleman (TX)
Collins (MI)
Combest
Condit
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cunningham
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Donnelly
Dooley
Doolittle
Dornan (CA)
Downey
Dreier
Early
Edwards (CA)
Engel
Erdreich
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gilman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hayes (LA)
Hefner
Henry
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Huckaby
Hunter
Hyde
Inhofe
Jacobs
James
Jenkins
Johnson (CT)
Johnson (TX)
Johnston
Kanjorski
Kasich
Kennedy
Kennelly
Kleczka
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Martin
Mavroules
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Moorhead
Moran
Morrison
Murtha
Neal (MA)
Neal (NC)
Nowak
Nussle
Oakar
Olin
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Patterson
Paxon
Payne (VA)
Pease
Peterson (FL)
Pickett
Pickle
Price
Pursell

Ramstad
Rangel
Ravenel
Reed
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roe
Roemer
Rohrabacher
Roth
Roukema
Roybal
Sabo
Santorum
Savage
Sawyer
Saxton
Scheuer
Schumer
Sharp
Shays
Shuster
Sisisky
Skaggs
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Spence
Spratt
Staggers
Stark
Stearns
Stump
Swett
Tallon
Tauzin
Taylor (NC)
Thomas (WY)
Torricelli
Valentine
Vento
Visclosky
Vucanovich
Walker
Walsh
Waters
Waxman
Weiss
Whitten
Williams
Wolf
Wyden
Wylie
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—40

Alexander
Bentley
Borski
Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Ford (MI)
Ford (TN)
Gingrich
Green
Guarini
Hatcher
Holloway
Hopkins
Lantos
Levine (CA)
Marlenee
Martinez
McHugh
Michel
Mink
Molinari
Mrazek
Payne (NJ)
Pelosi
Ray
Ros-Lehtinen
Rose
Slaughter (VA)
Stallings
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Traxler
Wolpe

□ 1408

The Clerk announced the following pairs:

On this vote:

Mr. Stallings for, with Mr. Guarini against.

Mr. Wolpe for, with Mr. Thomas of California against.

Mr. Marlenee for, with Mr. Molinari against.

Mr. KENNEDY and Mr. RANGEL changed their vote from "aye" to "no."

Mr. JOHNSON of South Dakota, Mr. CONYERS, Mrs. UNSOELD, and Messrs. WASHINGTON, MONTGOMERY, NATCHER, LEWIS of Georgia, and MFUME changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment number 10 printed in House report 102–281.

□ 1401

Mr. BARNARD. Mr. Chairman, let me state that when the Rules Committee authorized this amendment, I was in opposition to title III. Now as amended by the Vento amendment, I am in support of title III, but the Rules Committee did indicate that I could make a designee to offer title III.

Therefore, Mr. Chairman, I designate the gentleman from Vermont [Mr. SANDERS] as my designee to offer the striking amendment.

AMENDMENT OFFERED BY MR. SANDERS

Mr. SANDERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment, is as follows:

Amendment offered by Mr. SANDERS: Page 185, beginning on line 10, strike out all of title III through page 212, line 9, and redesignate the succeeding titles and sections (and references thereto), and conform the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentleman from Vermont [Mr. SANDERS] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes.

The Chair now recognizes the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I speak today in strong opposition to title III, a title which would significantly increase the concentration of ownership in the banking industry, a title which would result in the elimination of hundreds, if not thousands, of small community banks.

I speak in opposition to title III because the Federal Government does not have the right to wipe out the regulations developed by over 48 States, all of whom are attempting to represent the best interests of their citizens.

Mr. Chairman, this is an extremely dangerous piece of legislation which deserves to be defeated. All over America our people are alarmed by the growing concentration of wealth and power in this Nation, both for individuals and for industries. Today, the wealthiest 1 percent of our population owns over one-third of the wealth of the Nation and in industry after industry we see a handful of giant corporations controlling what is produced and distributed. The rich get richer and more powerful with more and more ownership resting in fewer and fewer hands, while the ordinary people and the small business people get poorer and have less opportunity to succeed.

Mr. Chairman, if we pass this title, which will allow the huge banking interests to come into any State in America and buy out any small bank that they want, what we will be creating is a banking industry which will be almost completely dominated by a handful of huge financial cartels. If you like that style of banking with a handful of huge cartels controlling the banking industry of America, then you can vote against this amendment.

In my own State of Vermont and in States all over this country, it is the small banks who are standing up for the consumer, for the small business person, who are supporting efforts toward affordable housing, lending out money to the minorities. It is not the huge mega-billion-dollar banks.

Mr. Chairman, we have heard all the arguments of how bigger is better and how we need to trust the banking future of this country to a handful of giant banks. Some in this body may think that is the way to go, but I respectfully and strongly disagree, and I am not alone.

I refer my colleagues to an article in the Quarterly Review which is put out by the Federal Reserve of Minneapolis, and what these economists tell us is something that we all know, bigger is not necessarily better. Over the past two decades, banks with assets of over $1 billion have failed at a rate over twice that of banks with less than $1 billion in assets. Big banks are less profitable than medium and small banks.

Some here would have us believe that all kinds of efficiencies can be gained by allowing this kind of concentration to occur, but again, the facts do not support that argument.

In the same Federal article, these two economists point out that very large banks experience diseconomies of scale, meaning they become less efficient.

It seems to me to support a policy which will create fewer, more risky, less profitable, and less efficient banks is irresponsible at best.

Mr. Chairman, I would like to address my remarks as the only independent in this House to my friends, the conservative Republicans, and my friends, the liberal Democrats.

In fact, Mr. Chairman, I am amazed from a philosophical point of view that Members of either the Republican or Democratic Parties could contemplate supporting this horrendous title.

My Republican colleagues claim to be conservatives. For years they have been talking about the need to get big government off the backs of the people and to allow mainstream America to determine its own future. How can an honest conservative go home to his or her State and say, "I have supported the Federal Government's right to almost completely preempt and override all State laws governing interstate banking"?

How can a conservative go home and say that after they have been telling us for years that they want big government to get off the backs of the people and to leave the States alone?

So I would hope that my honest conservative friends will say, let the States continue to regulate the banks. Do not let the Federal Government preempt banking regulations back home.

Mr. Chairman, for my Democratic friends who speak for the worker, the farmer, and the little guy, why are you aligning yourselves with the Chase Manhattan Bank and with Citibank against the needs of the people back home?

Mr. Chairman, I see the gentleman from North Dakota [Mr. DORGAN], and I am happy to yield to him.

Mr. DORGAN of North Dakota. Mr. Chairman, I appreciate the gentleman yielding time to me.

Mr. Chairman, I intend to support the gentleman's amendment to strike this title.

I think the question here is why would we decide in Federal law at this point in this bill to say that we will override State determination, State legislators, State law, with respect to what kind of banking exists in the given States? Why would we not want the States to continue to make that judgment on their own? Are they not in the best position to evaluate what they want for themselves and their future?

I cannot conceive of the largest money center banks coming in to a small State in the Midwest to see if they cannot better serve it. I can conceive that they would like to come out there with a vacuum cleaner and grab up all that money that is laying around and invest it someplace else in the world, but I do not believe that the impression might be that they would like to find a better way to serve those areas.

I think it is important at this time for us to decide to abandon this title in this bill and allow the States, who I think are in the best position to do so, to make judgments about what kind of banking they want in their States in their future.

I think the gentleman has done a service by offering this amendment today, and I intend to support it.

Mr. SANDERS. Mr. Chairman, I thank the gentleman from North Dakota. His point is well taken.

I was the former mayor of the city of Burlington, VT. As a mayor, and mayors all over this country today are able to walk into their local banks and say to their bankers, "We need money for affordable housing. We need money for minorities. We need money for women and small business. We need money to improve life in our communities."

If your small banks are owned by multinational corporations, citizens and local officials are going to be walking in and the banks will say, "Hey, we don't make those decisions. They are made out of State or they are made in Japan or they are made someplace else."

□ 1420

If we want the banking interests of this country to remain responsive to the needs of the people, we have got to say that large banks cannot simply come in and take over small banks all over this country.

Mr. Chairman, I reserve the balance of my time.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we had this argument in the committee, and the gentleman's argument was rejected then, his motion was rejected at that time.

We have had the argument twice before on this floor today in the Vento-Bereuter amendment and in the Richardson amendment.

I think the will of the House is to provide some accommodation for interstate branching.

Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to the amendment and would point out to my colleagues that the Vento-Bereuter amendment that we adopted in this bill provides the States with a positive role; in a 3-year period they will be able to opt out of interstate branching, interstate banking, if that is what they wish to do. Obviously, that is important that we recognize States' rights and their role. The Vento amendment also provides the States the right to regulate national branches on the same basis that they regulate State branches, on a nondiscriminatory type of basis.

I think it is important that the financial institutions across this country are able to move into the 21st century, be able to offer financial services on a nationwide basis.

We have a number of safeguards in the bill dealing with CRA, the Community Reinvestment Act; and amendment offered by Mr. KLECZKA in committee that talks about the role of banks that seek to move into interstate branching.

The gentleman from Iowa [Mr. LEACH] offered an amendment dealing with capital so that we are certain that interstate branching and banking institutions are adequately capitalized.

I think, beyond that we have dealt with concentration issues. My colleague and friend from Vermont has talked about concentration and the merger of institutions. That is going on today irrespective of whether we have interstate branching and interstate banking. The fact is that that is a concern.

This amendment we placed in the bill provides concentration limits, albeit very large limits, 10 percent of the national basis and 30 percent within the State, but they do provide some safeguards and do answer some of the concerns raised by the gentleman from Vermont.

So I think we have really fashioned a good interstate banking and branching compromise in the bill before us. I think we want to move forward now to determine the type of efficiencies and the type of economies that may be possible, and I therefore rise in opposition to the amendment to strike title III and support the Vento-Bereuter adopted amendment that is in the bill before us.

Mr. WYLIE. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I think the gentleman from Minnesota made an excellent point in closing, and that is that by permitting banks to expand interstate by branching, it is estimated that billions of dollars can be saved through the elimination of duplicative costs. I think this is a point that has to be made here.

Currently, all bank expansion is conducted through separate corporate entities even though they have the right to branch into another State. Each bank has to have its own board of directors, its own back office operations, its own overhead, its own paperwork requirements, and so forth. Branching makes it easier, less costly. It can effect economies of scale.

I think it makes it a lot easier for the consumer to take advantage of these reduced costs of banking.

I therefore would urge a "no" vote on the amendment.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to make two points, and if I may, I would like to query the distinguished gentleman from Ohio [Mr. WYLIE].

I say to the gentleman from Ohio that for years many of us have been hearing from conservative circles about the need to get Big Brother off the back of mainstream America. We have been hearing that the Federal Government is preempting the rights of the States and the cities and how terrible that is.

Could the gentleman please tell me and tell the people how one can defend a piece of legislation which basically wipes out the ability of the State governments all over this America to do what is best, what they deem to be best in terms of banking? How does one defend that?

Mr. WYLIE. If the gentleman would yield, I respectfully disagree with the gentleman's observation that it wipes out the opportunity for the States to do whatever they want to do. It really does not have anything to do, I would say to the gentleman, with the Federal Government's operations of these banks. That is already in place.

Now, we adopted the Vento-Bereuter amendment, which allowed the States to opt out if they do not like interstate banking or interstate branching.

So I would suggest to the gentleman that Vento-Bereuter is a States' rights amendment.

Mr. SANDERS. I would respectfully disagree with the gentleman from Ohio. In my State of Vermont, and, I suspect, in dozens of other States, there are regulations that the State legislatures have passed designed to protect the best interest of those States.

Basically, what they say, not just in terms of acquisition of banks, they say that if an out-of-State bank comes in and it is in the best interests of the

State, if they bring new capital into the State, if they are more responsive to the needs of the people in the State, "We will let those banks in." But, if not, "We won't let those banks in."

There is nothing in the Vento amendment which deals with the ability of large out-of-State banks to come in and to swallow up small, locally owned banks.

The States are being preempted in this area, and I think that that is very wrong and inconsistent with those people who for years have talked about Big Brother stepping over the rights of State and local government.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, under the Vento-Bereuter amendment, States have the option over a 3-year period to opt out so that they would not be involved. So I think the concern was that once they make that decision, obviously, then they fall under State laws. If they file under the Federal laws with regard to the size of institutions, there is a 30-percent limitation in the Vento amendment concerning concentration.

I thank the gentleman for yielding.

Mr. SANDERS. Let me reclaim my time, and then I will yield to the gentleman from Ohio.

What the gentleman from Minnesota is talking about is branching. He is not talking about acquisition, which is equally important. I would be happy to yield to the gentleman from Ohio.

Mr. WYLIE. Well, we have a difference of opinion, as I said a little earlier, on this. I would say this, in effect, gives the States more rights. It is the first time since the 1860's that the States have had a right to suggest that a bank can either opt out or branch in that State. Right now, we have on the books laws which say that the States have to pass laws with respect to the Community Reinvestment Act, consumer protection laws, fair lending practices, and so on.

So, with the Vento-Bereuter amendments, the States can apply the State law more so than they have been able to in the last 100 years, I would suggest to the gentleman from Vermont.

Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. I thank the gentleman for yielding.

Mr. Chairman, the Constitutional Convention in Philadelphia, there occurred a great debate about an interstate commerce clause. There were some such as the gentleman from Vermont who argued that having an interstate commerce clause was going to be the ruination of the individual States. The fact of the matter is we would not have had the Unites States of America as we know it today without the interstate commerce clause.

But we really did not go quite far enough. In a sense, what we are being asked to do in H.R. 6 is come up with an interstate banking clause similar to the interstate commerce clause, and some still do not want that, some still are fighting the fight that was fought 200 years ago against interstate commerce.

The fact of the matter is we are the only country on the face of the Earth that does not have a banking system that reflects the strength of its own national economy. We are split up into little pockets, and that is why we had a problem in Texas, because we were confined to Texas; and that is why we had a problem in New England, because we were confined to New England. This regional division has made our financial services system weak.

The gentleman from Vermont [Mr. SANDERS] would have it remain weak. Virtually everyone else recognizes, depending upon the nuances, the necessity for some form of interstate banking and branching.

I hope you all do other than Mr. SANDERS suggested; reject his amendment.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me respond briefly to Mr. LAFALCE and the point that those people who are enthusiastic about the growth of these huge multilateral banks are going to have the opportunity today and next week to vote for tens of billions of dollars of taxpayers' money to bail these institutions out.

□ 1430

Mr. Chairman, the record is very clear that the smaller banks, who know their communities, who invest in their communities, are much safer banks, and the expansion of banking powers to allow the huge multinationals to come in and swallow up the small banks will not only do a disservice to the small communities of this country, to farmers, to workers, to small business people, but it will also lay the groundwork for a bailout, the likes of which this Nation has never seen.

Mr. Chairman, a wide array of organizations have deep concerns about this title and about unlimited banking and branching. In a recent letter, that I suspect everybody in this body received, from the executive director of the National Conference of State Legislatures, from the President of the Conference of State Bank Supervisors, from the staff attorney of Public Citizen and from banking representatives of the Consumer Federation of America; all of these people write:

> We reject these provisions for interstate banking and branching because they will likely lead to excessive concentration in the banking industry. They are also likely to interfere with State laws and regulations intended to protect consumers and encourage community reinvestment.

They write:

> Banking is a part of the fabric of the economic life of each and every State. Preemptive actions by the Federal Government that limit the flexibility of States to deal with local economic problems, including the capacity to make choices about the financing of housing, small business and community development weaken our Nation as a whole.

The Kansas Bankers Association, they write, and I think they speak for many similar organizations around this country; they write:

> We strongly disagree with any Federal mandate on interstate banking and branching which does not allow each State to determine its own best strategy.

In addition, Mr. Chairman, I have received a letter from the Senate Finance Committee of the State of Vermont which raises the very same point. The point they are raising, my colleagues, is we do not know what is best for the people of Kansas or Vermont.

Mr. WYLIE. Mr. Chairman, I yield myself whatever time it takes me to close.

Mr. Chairman, I respectfully suggest that the gentleman from Vermont [Mr. SANDERS] is arguing against his own position. H.R. 6 does not permit banks to open interstate offices without approval of the States. It says that the States can opt out, if the individual State wants to opt out. What it does is allow interstate offices to operate in a more efficient way, through the opening of a branch rather than a separate subsidiary, which is now required. In H.R. 6, branches are subject to the regulation of their host State, just as they are now, as if they were separately corporated, as they are now. States retain control over the conduct of these branches in the State, as I stated a little earlier. It does effect economies of scale, and I respectfully suggest a "no" vote on the amendment of the gentleman from Vermont [Mr. SANDERS].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont [Mr. SANDERS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SANDERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 20, noes 374, answered "present" 1, not voting 38, as follows:

[Roll No. 369]

AYES—20

Bennett	Duncan	Miller (OH)
Conyers	Evans	Montgomery
Dellums	Hubbard	Myers
Dorgan (ND)	Jontz	Owens (NY)

Parker
Perkins
Poshard
Richardson
Rogers
Sanders
Volkmer
Yates

NOES—374

Abercrombie
Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bellenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Bonior
Boucher
Boxer
Brewster
Brooks
Broomfield
Browder
Brown
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Donnelly
Dooley
Doolittle
Dornan (CA)
Downey
Dreier
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Erdreich
Espy
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Oxley
Packard
Pallone
Panetta
Pastor
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rohrabacher
Ros-Lehtinen
Rostenkowski
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Sangmeister
Santorum
Sarpalius
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Upton
Vander Jagt
Vento
Visclosky
Vucanovich
Walker
Walsh
Waters
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wyden
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—38

Borski
Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Edwards (TX)
Ford (MI)
Ford (TN)
Gingrich
Green
Hatcher
Holloway
Hopkins
Lantos
Levine (CA)
Lloyd
Marlenee
Michel
Mink
Molinari
Mrazek
Nagle
Nowak
Payne (NJ)
Pelosi
Ray
Rose
Slaughter (VA)
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Valentine
Washington
Wolpe

□ 1453

Mr. VOLKMER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 102–281.

AMENDMENT OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. WATERS: Page 157, after line 22, insert the following new section:

SEC. 230. FREEZE ON BANK FEES FOR AVERAGE TAXPAYER ACCOUNTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (j) the following new subsection:

"(k) FREEZE ON BANK FEES FOR AVERAGE TAXPAYER ACCOUNTS.—

"(1) IN GENERAL.—During the 2-year period beginning on the date of the enactment of this subsection, no insured depository institution may impose any fee of any sort on any average taxpayer account in an amount in excess of the amount imposed for such fee on June 18, 1991.

"(2) AVERAGE TAXPAYER ACCOUNT DEFINED.—For purposes of paragraph (1), the term 'average taxpayer account' means any transaction account held by any person other than a corporation in which the average daily balance (determined on a monthly basis) does not exceed $3,000.".

Amend the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentlewoman from California [Ms. WATERS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair recognizes the gentlewoman from California [Ms. WATERS].

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I call this amendment the fees freeze. Banks are attempting to cut their losses and finance new capital by increasing banks fees, across the board. These fees include minimum deposit requirements, checking account fees, fees on automatic teller machine use, fees for cashiers' checks, and so forth. Obviously, these fee increases fall the heaviest on low-income people.

According to a recent study by a Connecticut accounting firm, two-thirds of the banks polled said they were passing their premium increases on to their customers. The study's author concluded that, "Customers are paying for the recapitalization and refunding of the FDIC's bank insurance fund." What this means, in effect, is that customers are paying for the banks' bad loan practices.

Fee increases have risen beyond any realistic cost of providing service. In fact, just recently, a State court judge in California ordered Bank of America to cut in half its bounced check fee, on the grounds that the charge represents an unfair business practice.

My amendment places a moratorium on fee increases for the smallest depositors for 2 years.

Mr. Chairman, I sat through 60 hours of markup in the Banking Committee on H.R. 6. In that time, we considered amendments to help community banks, big banks, the securities industry, the insurance industry, and other large corporations. There were very few chances to do something specific, something immediate, for average customers. That's all my amendment seeks to do.

Banks have many types of customers. If they must raise the money to pay for their premium increases, they can get it from their large, big money customers. That's where the money is.

I have singled out small depositors for exemption because the banks have ample opportunity to increase the fees of large depositors, many of whom have insurance guarantees far beyond $100,000. We are insuring billions of dol-

lars, at no cost to rich depositors, with great risk to the taxpayers. Surely rich depositors can offset the banks' premium increases and not be harmed in any way.

Mr. Chairman, all we are trying to do is make one simple gesture to the people of America. I think it is important to give small depositors a break. I think my amendment is fair and reasonable.

If I could make a final point, Mr. Chairman, the passage of my amendment would send an important message to the average consumer and small depositor in America. In light of recent events inside this institution, I think it is important to say that we, in Congress, are not so far removed from the hardships faced by most American banking customers.

The fees freeze is an honest attempt to be fair to banking customers. Small depositors have in no way contributed to the problems of the banking industry. They should not be responsible for recapitalizing it. My amendment is supported by the Consumer Federation of America, Public Citizen and ARORN. I urge my colleagues to support the amendment.

Mr. BAKER. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. HAYES], the distinguished former State banking commissioner of the State of Louisiana.

Mr. HAYES of Louisiana. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition, not because of any misunderstanding of the sentiment expressed by the gentlewoman from California [Ms. WATERS]. In fact, like all regressive taxes, such as those on gasoline and sales taxes, those who are harmed the most can afford it the least, when we build a system around very small spenders, small wage earners.

But in the earnings of a banking institution, what we are talking about is on-demand deposits. We are not talking about rich investors, because they will either be in certificates of deposit, or a nonaccount, where the cost analysis of the bank will be such that it will not spread with the same percentage of those who are $1,000 and less.

□ 1500

The point I am making is this: Across America there are people who are made up of a strong middle class who look at me every weekend when I return to Louisiana and express all of their frustrations with single sentences like "I carry the load for everyone; I pay more taxes and yet I don't qualify for any program to get my kid a scholarship; on the other hand I don't make enough money to pay tuition."

The same would be true here. It would not be major corporate depositors and demand money. It would be middle class America with a poverty line in my district of most families who still would cross the $1,000.

What I would like to support the gentlewoman on, and I have a feeling she may in the future have an opportunity on a later banking bill to offer it, is this: If we could put the two together, where, as part of the obligation under community reinvestment we could allow those frozen wage earners and senior citizens who fall at the poverty scale and the lowest amount of deposits for their fees and free fees to be part of the bank's obligation of community reinvestment, we might well be able to do two things: Help more members of the community who need it most and not affect banking institutions with rates being lowered by the Fed and with obligations made upon their demand deposits that will not allow the collection.

Ms. WATERS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I rise in support of the Waters amendment. The fact is that taxpayers are being taxed twice. They are paying twice at least, once for the premiums in the form of fees and again through tax-supported bailouts. I am going to read from a recent Wall Street Journal story, and I quote:

> The average consumer is feeling the pinch, too. Banks recognize that it would be politically explosive to charge a specific fee to cover insurance premiums on consumer accounts, but many are effectively doing just that. Service charges on personal savings and checking accounts are on the rise. New fees are being levied and banks are approaching a higher lending rate while offering low rates on deposits.

The Waters amendment shifts the burden back to the banks and it should be adopted.

Ms. WATERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Chairman, I rise in support of this protaxpayer, proconsumer fairness amendment from the gentlewoman from California, and I urge an "aye" vote.

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill extends $30 billion in loans to the Treasury Department to recapitalize the bank insurance fund. We are told that banks will repay this loan over time through increased premiums. The implication is also that we are avoiding a taxpayer bailout of the banking industry.

Now, if banks turn around and increase their bank fees to pay back this borrowed money to the Treasury, I am not sure I see the difference between that and a taxpayer bailout. Why are bank customers supposed to feel better about having their fees increased for the next 30 years?

Increased bank fees are a hidden tax on consumers. This bill supposedly avoids a taxpayer bailout. My amendment simply insures that small depositors are not hit by bank fee increases, or hidden taxes, for 2 years.

Mr. Chairman, this is not for poor people. Poor people do not have any bank balances. This is for working people and middle-income people. This is a piece of legislation for fairness. It will send a message that those of us in Congress understand what it means to have a part of your salary eaten away by bank fees and increases.

I would ask for an "aye" vote on the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. BAKER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a very important amendment and certainly no one faults the effort to help those in society who cannot help themselves. Certainly those who are on support programs of various governmental agencies who are finding it more and more difficult to afford utilities and food certainly should not be faced with ever-increasing costs to carry on their financial activities.

But however, well-intended the gentlewoman's amendment may be, in fact, the way the amendment is constructed, it goes far beyond the description we have had here on the House floor. It would extend the benefits of no increase in bank service charges to any average taxpayer account which is defined as anyone who is not a corporation, a law partnership, a sole proprietorship a congressional campaign account. There are a litany of account services which would not be subject to any fee increases as the result of the 2-year moratorium this amendment would provide.

Further, in really looking at the credit needs of many of those who are lower income individuals, they certainly would like to have low-interest rates in order to be able to buy that washing machine or that automobile or hopefully at some point in their life be able to acquire that home.

What will simply happen in the marketplace as a result of the fees limitation the Waters amendment would impose will be simply to shift the income the bank now gets from fees and service charges over to the interest market. We simply cannot allow banks to lose additional funds with the imposition of the Waters amendment.

If they do not, for whatever reason, shift the loss of income over to the interest charges for services and acquiring those goods and services, which people may need for their homes, clearly this will lead to additional losses to banking institutions which are already troubled.

If we like FDIC failures and taxpayers bailouts, tell banks they cannot generate fees and services charges from activities they provide for their cus-

tomers. If we were going to do it, why should the average balance which will be subject to this amendment be set at $1,000? If we are going to help indigent folks who should not be paying onerous bank fees, it would seem to me that the limitation on free banking services or a freeze on banking service charges would be more appropriate at the $100 or $200 level. But not allow someone who has multiple accounts in different financial institutions and may, in fact, have several thousands of dollars on deposit get by without any increase in fees or services charges as a result of this amendment.

I certainly understood the gentlewoman's intent in offering it, but I think it misses the mark. It would be ill-advised to adopt, and I would ask the House to reject.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in strong support of the amendment offered by my colleague from California.

Under the provisions of H.R. 6, banks will be required to pay higher insurance premiums and special assessments to the FDIC. We need not delude ourselves as to where the banks will get the funds for these additional payments. They will be passed on to bank depositors in the form of higher fees for accounts and services. The account holders who would be affected by this fine example of trickle down economics are those that are least able to absorb an increase in fees. We are not talking about persons who have hundreds of thousands of dollars in several accounts, but small depositors. These are the bank customers this amendment seeks to assist with a 2-year freeze on increasing fees they pay to their bank.

Make no mistake about it, this is not a consumer oriented bill, nor will the measure do much for small depositors. I am sorry to see that this bill does not contain a provision mandating that banks provide a low-cost check cashing services or lifeline checking accounts. These services are options under the bill's new Bank Enterprise Program, but participation is not mandatory. Further, no significant revisions are made to the Community Reinvestment Act to put teeth into existing antiredlining policies. This amendment will significantly enhance this bill.

I urge my colleagues to support this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. WATERS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Ms. WATERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 70, noes 336, answered "present" 1, not voting 26, as follows:

[Roll No. 370]

AYES—70

Abercrombie
Ackerman
Andrews (ME)
Annunzio
Atkins
AuCoin
Bonior
Boxer
Brown
Carper
Clay
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
Dellums
Donnelly
Early
Edwards (CA)
Engel
Espy
Evans
Fazio
Flake
Foglietta
Gonzalez
Hayes (IL)
Hertel
Jefferson
Kaptur
Kennedy
Kostmayer
Lehman (FL)
Lewis (GA)
Markey
Matsui
McDermott
Mfume
Mineta
Moakley
Neal (MA)
Nowak
Oakar
Olver
Owens (NY)
Pallone
Pastor
Payne (NJ)
Rangel
Roybal
Sanders
Savage
Schroeder
Serrano
Slaughter (NY)
Stark
Stokes
Studds
Torres
Torricelli
Towns
Traficant
Vento
Waters
Waxman
Weiss
Wheat
Wyden
Yates

NOES—336

Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Borski
Boucher
Brewster
Brooks
Broomfield
Browder
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Ewing
Fascell
Fawell
Feighan
Fields
Fish
Ford (MI)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kasich
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Martin
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Miller (CA)
Miller (OH)
Miller (WA)
Mollohan
Montgomery
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nussle
Oberstar
Obey
Olin
Ortiz
Orton
Owens (UT)
Oxley
Packard
Panetta
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Russo
Sabo
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—26

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Ford (TN)
Green
Hatcher
Hopkins
Lantos
Levine (CA)
Marlenee
Martinez
Michel
Mink
Molinari
Mrazek
Pelosi
Ray
Slaughter (VA)
Sundquist
Taylor (MS)
Thomas (CA)
Washington

□ 1528

The Clerk announced the following pair:

On this vote:

Mr. Dymally for, with Mr. Thomas of California against.

Mr. DEFAZIO changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 12 printed in House Report 102-281.

AMENDMENTS EN BLOC OFFERED BY MR. GRADISON

Mr. GRADISON. Mr. Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendment en bloc is as follows:

Amendments en bloc offered by Mr. GRADISON: Page 158, beginning on line 5, strike out sections 232 and 233 through page 177, line 13, and redesignate the succeeding section (and references thereto) and conform the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentleman from Ohio [Mr. GRADISON] will be recognized for 5 minutes, and a

Member opposed will be recognized for 5 minutes.

The Chair recognizes the gentleman from Ohio [Mr. GRADISON].

□ 1530

Mr. GRADISON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment would strike sections 232 and 233 from the bill. These provisions entitle banks and S&L's to a reduction in their insurance premiums when they engage in certain socially useful activities.

Section 232 requires the bank insurance fund and the savings association insurance fund to cut in half any assessments on so-called lifeline accounts which offer basic transaction services to individuals. CBO estimates that this provision will cost the insurance funds $17 million in 1993–95. Section 233 of the bill would entitle banks to a reduction of between 5 and 15 percent in the assessment rate for any increases in lending to distressed neighborhoods. Although the sponsors have amended the bill's provisions to reduce their cost, CBO still estimates that the insurance funds would lose roughly $40 to $50 million of receipts each year from this second provision.

My objection is twofold. First, sections 232 and 233 contain direct spending and thus evade the appropriations process. At a time of record deficits, we should not enact new programs without at the same time finding the means to pay for them. Both of these provisions violate the Budget Act. However, the Committee on Rules has waived all points of order against them. Nevertheless, if left in the bill, they will result in additional PAYGO costs which, if not paid for later, will result in a sequester of nonexempt mandatory spending. Among the programs which will be reduced as the result to a sequester are Medicare, student loans, and farm price supports. My amendment seeks to protect these programs by striking any additional spending from the bill.

Second, these sections compromise both insurance funds. The bill's sponsors may argue that their provision allows the insurance funds to make up the lost premiums by increasing the assessment rate on banks. This power is likely to be meaningless, however, given the current weakness of the funds. The S&L industry has already had to seek taxpayer assistance. Elsewhere in H.R. 6 we authorize the FDIC to borrow an additional $30 billion from the Federal Government. Many experts doubt whether the fund will be able to repay this amount. If it does not, every dollar to premiums lost as a result of these provisions will have to be made up by taxpayers.

The insurance funds were set up to achieve a single, very important purpose: to ensure that the banking industry paid the cost of the Government's deposit guarantee. To be effective, premiums into the fund should be based solely on risk, and not on extraneous factors. The funds should not be used as a back door source of funding for other initiatives, however worthy. If Congress wants to create the type of programs called for in these two sections, it should fund them directly and pay for them with spending reductions in other programs. The new Chairman of FDIC, who has to oversee both of these funds, has written me a letter amplifying these concerns.

Mr. Chairman, usually I do not insist on a recorded vote. Today, however, I will. Responsible governing involves tough choices, and Members should be evaluated according to how they handle these choices. The sponsors of this provision are wrong when they insist that this vote is solely about investing in distressed communities. In this day of limited budgets, we only have so many dollars to spend. This vote is on whether we should spend those dollars on distressed communities instead of on existing programs such as Medicare, student loans, and farm income supports.

I am asking my colleagues to help me maintain the integrity of the insurance funds and protect existing programs. Support my amendment to strike sections 232 and 233.

Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I stand in strong support of the gentleman's amendment. I think the goals of the Ridge amendment are laudable. I think to promote lifeline or investment in the Community Investment Association is something the banks should be doing, but I do not think we need to report them for something they should be doing anyway.

Know full well, Mr. Chairman and Members, that part of this bill provides for a $70 billion loan to the banks, a loan which they are expected to pay back. I do not believe that we can at this point accept the Ridge committee amendment which relieves millions and millions of dollars of these insurance premiums which will be necessary and will go to pay off the loan. Know full well, though, that if we relief the banks from this insurance premium, it is your constituents, the taxpayers of this country, who will have to pick up that slack.

For that reason, Mr. Chairman, I ask the Members to vote for the amendment of the gentleman from Ohio.

Mr. RIDGE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. RIDGE] is recognized for 5 minutes.

Mr. RIDGE. Mr. Chairman, first of all, I yield 2 minutes to the gentleman from New York [Mr. FLAKE], the cosponsor of these sections known as the Bank Enterprise Act, which passed in the Committee on Banking, Finance and Urban Affairs by a vote of 37 to 11.

Mr. FLAKE. Mr. Chairman, the gentleman from Pennsylvania [Mr. RIDGE] and I join together in sponsoring an amendment, believing that it is important that this body understands what is happening in communities that are currently underserved by the banking community. It is our intention to try to create within those communities the means by which its citizens might be able to have access to some of the capital that is available in other parts of the communities through loans and through other kinds of services that banks generally offer. Those services are not offered to any great degree today, simply because many branches have already closed in those communities, thus the persons who live in these distressed areas and communities where banks are currently underserving them, find themselves at a major disadvantage.

We realize, Mr. Chairman, there are those who will argue that this does not conform to the budget agreement; but Mr. Chairman, I think it should be understood that the costs of the properties that are inventoried by the Federal Government more than offset the costs of what this particular program would cost.

Now, $43 million according to some estimates by the CBO is not a lot of money when one thinks about the fact that there are many persons living in these communities who cannot get loans, who cannot get basic financial services from the banking community.

I would argue against the person who has made this particular amendment today that the moneys do not necessarily come from Medicare, student loans, or farm supports. I think that is just an attempt to try to get persons to be in opposition to the bill.

In reality, Mr. Chairman, I think it is the right thing, I think it is the fair thing for this body to reject this particular amendment. I think it hurts more people than it helps. I think that everybody has a right and ought to have an opportunity to be able to have access, to be able to live in a home, to be able to know that that home can be mortgaged just like it can in any other part of the community.

So Mr. Chairman, I would urge that the Members of this body will vote against this particular amendment and give support to myself and the gentleman from Pennsylvania [Mr. RIDGE] as we try to do something that we think this Nation needs.

Mr. RIDGE. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, there are better ways, I believe, than this amendment to do this, but they are not available to us. Had the amendment of my colleague, the gentleman from Massachusetts [Mr. KENNEDY] passed, strengthening enforcement, I might not have voted for this; but now this is the only way left for us to do it, by incentive.

I do want to rise as a member of the Budget Committee to protest that this poor little gesture on behalf of the poor people being clubbed to death by that overburdened budget. This bill is going to raise billions and billions of dollars.

The gentleman from Pennsylvania and the gentleman from New York want to sprinkle a couple million on the poor people, and for the budget guns to be wheeled out and shoot that down is disproportionate.

This money is within the margin of error on the budget. We are not talking about very significant sums, and it is wholly inappropriate at this point to use the budget to squash the one last hope that we may have for people who will be weakened by this bill.

Mr. RIDGE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman and my colleagues, ever so briefly, I would like to think that there is a bipartisan consensus that we need the Community Reinvestment Act.

I would like to think as a matter of social and economic policy that we agree that banks should be sensitive to the legitimate credit needs of people in distressed communities and distressed areas, more often than not minorities.

We have seen by the most recent Federal Reserve report that there is an unconscionable pattern of discrimination that occurs in these distressed communities. Many of you have read the recent Federal Reserve report. The report was quite clear that a pattern of discrimination existed. Therefore if you believe it is incumbent upon us to reverse this pattern of discrimination and if you believe that improving CRA is a worthy legislative and social policy objective, as policy makers we only have two alternatives to do so. We either punish the banks for their failure to live up to their CRA requirements, and our colleague, the gentleman from Massachusetts [Mr. KENNEDY], offered an amendment like that and it was defeated; his amendment would punish banks if they redlined neighborhoods and that amendment was defeated. The Ridge-Flake Bank Enterprise Act rewards institutions if they greenline, if they take pro-active steps in those distressed communities. There are incentives in the sections this amendment seeks to strike; are incentives for lifeline accounts, for lending, for locating community development corporations and community development banks, for investing in these distressed neighborhoods.

□ 1540

Now, I differ with the author of this amendment, who claims it involves an expenditure of $40 to $50 million a year. The CBO estimate that we received said it would be about $60 million over 4 years, or $15 million annually.

My colleagues, the banks themselves will pay into the bank insurance fund over the next 4 years roughly $25 billion. What we are asking you to do today is to join with us in approving the use of two-tenths of 1 percent of that huge sum to leverage 1 billion dollars' worth of investment in distressed communities. No one can argue that using two-tenths of 1 percent of what banks will pay into the BIF, or 60 million of the $25 billion, will destabilize the insurance fund.

I respectfully disagree that sequestration will follow, as predicted by the author of the amendment.

My colleagues, I encourage you to defeat this amendment and support this initiative to encourage banks to invest in distressed communities.

The CHAIRMAN. All time has expired.

The question is on the amendments en bloc offered by the gentleman from Ohio [Mr. GRADISON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GRADISON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 204, noes 205, answered "present" 2, not voting 22, as follows:

[Roll No. 371]

AYES—204

Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Ballenger
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bilbray
Bilirakis
Boehner
Boucher
Broomfield
Bunning
Burton
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Combest
Condit
Costello
Coughlin
Cox (CA)
Crane
Cunningham
Davis
DeLay
Derrick
Dickinson
Dicks
Dooley
Dorgan (ND)
Dornan (CA)
Dreier
Edwards (TX)
Emerson
Fawell
Fields
Franks (CT)
Gallo
Gaydos
Gejdenson
Gekas
Geren
Gibbons
Gillmor
Gordon
Goss
Gradison
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Houghton
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (SD)
Johnson (TX)
Jones (GA)
Kanjorski
Kleczka
Klug
Kolbe
Kopetski
Kyl
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Lowery (CA)
Machtley
Martin
Martinez
Mazzoli
McCandless
McCollum
McCrery
McGrath
McMillan (NC)
McMillen (MD)
Meyers
Miller (CA)
Miller (OH)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murphy
Myers
Nagle
Nowak
Oberstar
Obey
Olin
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Pursell
Quillen
Rahall
Ramstad
Regula
Rhodes
Rinaldo
Roberts
Rohrabacher
Roukema
Russo
Sarpalius
Sawyer
Saxton
Schaefer
Schulze
Sensenbrenner
Shaw
Sisisky
Skaggs
Skelton
Smith (IA)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stallings
Stearns
Stenholm
Stump
Sundquist
Tanner
Taylor (MS)
Thomas (WY)
Thornton
Torricelli
Valentine
Vander Jagt
Volkmer
Vucanovich
Walsh
Weber
Wilson
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—205

Abercrombie
Ackerman
Andrews (ME)
Annunzio
Atkins
AuCoin
Bacchus
Baker
Barnard
Berman
Bevill
Bliley
Boehlert
Bonior
Borski
Boxer
Brewster
Browder
Brown
Bruce
Bustamante
Carper
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Conyers
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Dingell
Donnelly
Doolittle
Downey
Duncan
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Engel
English
Erdreich
Espy
Evans
Ewing
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Frank (MA)
Frost
Gallegly
Gephardt
Gilchrest
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Grandy
Hall (OH)
Harris
Hatcher
Hayes (IL)
Hertel
Hobson
Hochbrueckner
Holloway
Horn
Horton
Hoyer
Hubbard
Jefferson
Johnson (CT)
Jones (NC)
Jontz
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kolter
Kostmayer
LaFalce
Lagomarsino
Lehman (FL)
Lewis (GA)
Livingston
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Matsui
Mavroules
McCloskey
McCurdy
McDade
McDermott
McHugh
McNulty
Mfume
Miller (WA)
Mineta
Moakley
Moody
Moran
Morrison
Murtha
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Olver
Ortiz
Orton
Owens (NY)
Pastor
Payne (NJ)
Perkins
Peterson (FL)
Price
Rangel
Ravenel
Ray
Reed
Richardson
Ridge
Riggs
Ritter
Roe
Roemer
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Rowland
Roybal
Sabo
Sanders
Sangmeister
Santorum
Savage
Scheuer
Schiff
Schroeder
Schumer
Serrano
Sharp
Shays
Shuster
Sikorski
Skeen
Slattery
Slaughter (NY)
Smith (FL)
Smith (NJ)
Solarz
Spratt
Staggers
Stark

Stokes	Traficant	Weldon
Studds	Traxler	Wheat
Swett	Unsoeld	Williams
Swift	Upton	Wise
Synar	Vento	Wolf
Tallon	Visclosky	Wolpe
Tauzin	Walker	Wyden
Taylor (NC)	Washington	Wylie
Thomas (GA)	Waters	Yates
Torres	Waxman	
Towns	Weiss	

ANSWERED "PRESENT"—2

Brooks	Cooper

NOT VOTING—22

Bryant	Green	Mink
Campbell (CO)	Hopkins	Mrazek
Chapman	Johnston	Pelosi
Dannemeyer	Lantos	Slaughter (VA)
Dixon	Levine (CA)	Thomas (CA)
Dwyer	Marlenee	Whitten
Dymally	McEwen	
Ford (TN)	Michel	

□ 1600

The Clerk announced the following pairs:

On this vote:

Mr. Thomas of California for, with Mr. Dymally against.

Mr. Green of New York for, with Mr. McEwen against.

Messrs. SMITH of New Jersey, KENNEDY, ORTON, SHAYS, GLICKMAN, and HOLLOWAY changed their vote from "aye" to "no."

Mr. WILSON and Mr. THORNTON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to reconsider the amendment numbered 13 printed in House Report 102-281.

AMENDMENTS EN BLOC OFFERED BY MR. WYLIE

Mr. WYLIE. Mr. Chairman, I offer the amendments en bloc numbered 13.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. WYLIE: Page 455, line 8, strike "(C) and (D)" and insert "(C), (D), and (E)".

Page 455, strike lines 9 through 19 and insert the following new subparagraphs:

"(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor or by others for the benefit of the depositor, as follows:

"(i) Deposits registered under the same taxpayer identification number or employer identification number of one depositor shall be attributed to that deposit.

"(ii) Deposits registered under the taxpayer identification number or employer identification number of more than one depositor shall be attributed equally, unless otherwise specified in the deposit account records, among those depositors.

"(iii) Deposits consisting of a revocable trust or similar account shall be attributed to the settlor or grantor of the deposit account.

"(iv) Deposits maintained by an individual or entity (including an insured depository institution) acting as an agent, custodian, nominee, conservator or in a similar capacity on behalf of a principal (other than an insured depository institution) shall be attributed to such principal.

"(v) Such other attribution to a depositor as the Board of Directors determines by regulation not to be unduly burdensome and costly to calculate; provided that the depositor has control over the deposit account and that such attribution would be consistent with the insurance purposes of this Act.

"(D) DEPOSITOR IDENTIFICATION.—

"(i) IDENTIFICATION NUMBER.—All deposits shall be registered under the taxpayer identification number or employer identification number of each depositor.

"(ii) CONSIDERATION OF ADDITIONAL INFORMATION.—For the purpose of aggregating and attributing deposits the Corporation may consider additional information contained in the records of the insured depository institution or made available by the depositor.

Page 455, line 20, strike "(D)" and Insert "(E)".

Page 462, after line 8, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(2) AGGREGATON RULES.—Section 11(a)(1)(C) of the Federal Deposit Insurance Act (as amended by subsection (b)(1) of this section) shall take effect on January 1, 1995.

Page 463, line 3, strike "(B)" and insert "(E)".

The CHAIRMAN. Under the rule, the gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes and a Member opposed will be recognized for 15 minutes.

Mr. HUBBARD. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The gentleman from Kentucky [Mr. HUBBARD] will be recognized for 15 minutes in opposition.

The Chair recognizes the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is the amendment that would limit deposit insurance coverage to $100,000 on regular deposit accounts per person in each institution. It would also allow for a $100,000 IRA account.

Because of the hearings over the years and the exposure of the Federal Savings and Loan Insurance Corporation fund, I had thought that the limit ought to be $100,000 per individual in all accounts. The Secretary of the Treasury and the Chairman of the Federal Deposit Insurance Company thought that was too restrictive and suggested a provision, which was in their bill, and which permitted $100,000 per individual per institution. A person could have as many $100,000 accounts as they have money if they would spread it around among the institutions.

Then we included an IRA account for each person in as many institutions as he desires. The IRA was a very, very successful way of encouraging savings. This amendment in effect, would recognize a very, very popular savings program.

I have a letter here from a good friend of mine who was the chief executive officer of a very successful depository institution. I got it this morning. This is what it says:

DEAR CHALMERS: Just a short note to tell you I think you are on the right track in trying to get Federal Deposit Insurance coverage reduced. It was never meant to cover such sizable amounts. It was to protect the little guy. Reducing the coverage would also, of course, reduce the Federal Government's potential loss.

Sincerely,

TOM.

That is the thrust of my amendment right there, and it says it much better than I can. If we cannot do this as far as deposit insurance reform is concerned, we cannot do anything.

I have an ad here from a bank that says that if you want coverage "up to $1.4 million in your individual account, we can show you how to do it." It says that a husband, wife, and two children may insure accounts up to $1.4 million.

Now, this is a gross distortion of what deposit insurance was supposed to be all about. I have no quarrel with the bank in proposing this or making this advertisement. It is perfectly legal, and what they have suggested is perfectly legal.

Here is a pamphlet from the Wright-Patman Federal Credit Union, and it says the same thing, that a multiple account is an easy way for wealthy, sophisticated investors to get protection.

I have an article here from the local newspaper, the Washington Post, that says, "Bank customers shuffling accounts to ensure Federal protection."

The lady shown here is actress Lynda Carter, "Wonder Woman," and she is married to Mr. Altman, who was president of the First American Bank until recently. The article says that she is shifting her money around into several accounts. "Carter took the money last week, sources said, and split her money up into a number of smaller accounts, each one fully insured by the Federal Government in the event of a bank failure. The Federal Government will insure up to only $100,000 in each account."

So she spread it around in several accounts. As I say, I think it is perfectly all right, and she is smart to do it, but that is an abomination of the process. Ninety-seven percent of all Americans who have deposits in banks and savings and loans will not be affected by my restriction, according to the FDIC. I cannot point to a single bank or savings and loan that has failed because of this excessive coverage, but I can point to many savings and loans which have helped to cause the problem with the Federal Savings and Loan Insurance Corporation fund because they went broke and depositors were insured for almost any amount they put in the bank, both insured and uninsured.

Mr. Chairman, I want to make one more point very clear. My amendment, as now drafted, is tied to the elimination of the too-big-to-fail doctrine. The bill says that no depository insti-

tution would be too big to fail after January 1, 1995, and no account will be insured above $100,000 after January 1, 1995. So there is a 3-year transition period. That ought to be plenty of time for the banks to get their house in order so we can get ours in order.

Many small banks complain that the too-big-to-fail doctrine was causing disintermediation, that money was being taken out of the small banks and shifted into large banks because they were too big to fail. Well, there will be no more deposit insurance based on the too-big-to-fail concept and for uninsured deposits after January 1, 1995.

□ 1610

I have a chart here that shows the growth of FDIC-insured deposits as a percentage of total bank deposits. I want to show Members how that has grown since deposit insurance was put in effect back in 1934. Here it is way up here today. This chart alone seems to me to demonstrate the wisdom of my amendment, and I urge an aye vote.

Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I would like to ask the distinguished gentleman from Ohio [Mr. WYLIE] to clarify for me a provision of his amendment as it deals with passthrough insurance on pension funds and deferred compensation plans.

When we completed our work in the Committee on Banking, Finance and Urban Affairs, we provided in section 511 on deposits and pass-through insurance that Federal deposit insurance on a pro rata or pass-through basis would continue to be available on employee benefit plans as described in section 11(a)(8)(B)(ii) of the FDI Act and for deferred compensation plans, including 457 plans as described in the Internal Revenue Code of 1986, as long as deposits in these plans are placed in institutions which have sufficiently high ratings.

Mr. WYLIE. Mr. Chairman, will the gentlewoman yield?

Ms. OAKAR. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, that is correct. That would continue. My amendment does not impact on the 457 pass-through amendment which was adopted by the House Committee on Banking, Finance and Urban Affairs. I do not change that.

Mr. HUBBARD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge Members to strongly oppose this amendment, for three reasons. First of all, the amendment will not reduce losses experienced by the Federal deposit insurance fund. Second, the amendment will heighten public anxiety, that is for sure. Third, the amendment will destabilize financial institutions, worsen the credit crunch, and be detrimental to the American economy.

Last Thursday on this bill we voted for a certain amendment. The next day the headlines of the papers across the Nation stated "House votes to curb bank expansions."

Mr. Chairman, can you imagine the headlines across the Nation tomorrow if this amendment by the gentleman from Ohio [Mr. WYLIE] should pass? The headlines would be "House cuts bank deposit insurance." Imagine the credit crunch that will come about, even worse than we have now.

My friend, the gentleman from Ohio [Mr. WYLIE], mentioned the Washington Post. I was not planning to mention their editorial opposing the Wylie amendment, but let me read the first paragraph, the headline being "Don't cut deposit insurance."

The first paragraph of the Post editorial:

> While many things need to be changed in the American banking system, the basic system of deposit insurance is not one of them. As Congress goes to work on the banking bill this week it would be wise to leave deposit insurance alone. The purpose of this bill is to produce stronger and more stable banks. Cutting bank insurance for depositors would just do the opposite.

Mr. Chairman, this amendment lost in the Subcommittee on Financial Institutions. It was defeated four times as it came up in different wording in the full Committee on Banking, Finance and Urban Affairs. Here we go again. There is a simple reason why a significant majority of members on the House Committee on Banking, Finance and Urban Affairs have opposed changes in this area: Altering deposit insurance coverage is bad public policy.

The fact of the matter is, this amendment would be ineffective at best. That is why such diverse entities as the U.S. General Accounting Office, the American Association of Retired Persons, the U.S. Chamber of Commerce, over two dozen major business groups, and, yes, every bank in America, opposes the reduction of deposit insurance coverage.

Mr. Chairman, I urge Members vote no on the Wylie amendment.

Mr. WYLIE. Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would just like to ask the distinguished ranking member several questions. Is this more or less the position that the administration proposed in the original bill?

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, this is the administration position proposed in the original bill. Exactly.

Mr. LEACH. Mr. Chairman, reclaiming my time, historically is it not the case that deposit insurance was designed to protect the small depositor? Not institutions, but the depositor?

Mr. WYLIE. Mr. Chairman, if the gentleman will yield further, that is correct. Originally it was for $2,500. Given the rate of inflation, we now have a fourfold increase in that amount.

Mr. LEACH. Mr. Chairman, the more deposits that get protected, the greater the taxpayer liability?

Mr. WYLIE. There is no question about that. That is the purpose of my amendment, to protect the taxpayers from more liability.

Mr. LEACH. Mr. Chairman, I appreciate that. I would like to make one comment. As every Member in the Chamber knows, small banks feel disadvantaged by this. It is an understandable circumstance. On the other hand, it is the large banks that hold the larger number of deposits, on which there is a multiplicity of $100,000 coverages. If there is no change, what it means is that the large banks have far larger coverage for which the small banks—through their payments into the deposit insurance system—will have to, in effect, be held accountable.

Mr. Chairman, I would ask the gentleman from Ohio [Mr. WYLIE], is that a valid observation?

Mr. WYLIE. Mr. Chairman, that is a valid observation.

Mr. LEACH. So in one sense, it is really to the advantage of a small bank to have prudential deposit insurance, if that bank does not have as high a number of large deposits as a larger bank?

Mr. WYLIE. Mr. Chairman, I would think so, yes.

Mr. Chairman, the gentleman from Iowa [Mr. LEACH] made some very discerning observations. The gentleman is a valuable member of the committee.

The administration strongly supports this limit on deposit insurance.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. BACCHUS].

Mr. BACCHUS. Mr. Chairman, I rise in opposition to this amendment. I support reducing the risks to taxpayers from the failures of tottering banks. I do not support limiting deposit insurance in an effort to limit those risks, not while the misguided doctrine of too big to fail continues to enthrall bank regulators.

Mr. Chairman, the answer is not to limit deposit insurance; the answer is to limit the insured activities of banks. That is why I support core banking.

Mr. Chairman, the gentleman from Ohio [Mr. WYLIE] says he wants to protect the little guy. Amending the bill before us to limit deposit insurance would not protect the little guy, and it would not limit taxpayer exposure. This amendment would increase taxpayer exposure by encouraging the shift of millions upon millions in deposits from safe community banks to shaky money center banks that are the most likely to fail and fail big.

Mr. Chairman, I urge Members to defeat the Wylie-Gonzalez amendment.

Mr. WYLIE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Texas [Mr. GONZALEZ], the chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, as one of the cosponsors with the gentleman from Ohio [Mr. WYLIE], I rise in support of the amendment. I want to run over briefly the key points involved here, because I think there has been a lot of obfuscations.

Mr. Chairman, let me say that I rise with somewhat of a shameful feeling that we would come up with this meager reduction in the base of exposure of this unsurance fund. It should be more substantial, to be truly honest with Members, and with the American people above all.

Mr. Chairman, if we continue the way we are going, I will predict that you will not be able to keep the commitment that the Government stands behind of paying up to $100,000 in insurance protection. You will see the day, and I do not think we can keep going the way we are at this exponential rate, where they will not even be able to pay 30 cents on the dollar.

Mr. Chairman, let us bring some sense to this ridiculous situation in which we have gotten the Nation. No other country has such a ridiculous and corrupted system as we have. You have got $3 trillion of insured deposits in the commercial banking system alone, and you have got a broke fund. You have got a broke insurance fund.

Mr. Chairman, how can anyone say that you have the capacity to pay on that guarantee, with no effort made to reduce that exposure? Rather we are increasing it.

One thing for sure: Because this has been obfuscated by the very tremendous bank, the IBAA and those folks, the effective date of the amendment proposed coincides with the effective date of the formal elimination of the too-big-to-fall policy in order to prevent the depositors from shifting their funds from small local banks to large money center and super regional banks in order to receive too-big-to-fall protection for deposits of over $100,000.

Mr. Chairman, I believe that this goes a little way in restoring what is still the congressional intent, that the amount to be insured by the taxpayers is up to $100,000. We have had studies that the committee staff have made just as of last year in the closeouts that have been resolved. The regulators were paying out 99 percent of all depositors.

The gentleman from Ohio [Mr. WYLIE] said just the other day in debate that the average depositor in the United States does not have over $8,750 in his account. So let us bring some common sense back.

The CHAIRMAN. The Chair will advise that the gentleman from Ohio [Mr. WYLIE] has 3½ minutes remaining, and the gentleman from Kentucky [Mr. HUBBARD] has 11½ minutes remaining.

□ 1620

Mr. HUBBARD. Mr. Chairman, I yield a minute and a half to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Chairman, I reluctantly rise in opposition to this amendment by the distinguished chairman of the Committee on Banking, Finance and Urban Affairs and my ranking member, the gentleman from Ohio [Mr. WYLIE].

We have taken steps, my colleagues on the Committee on Banking, Finance and Urban Affairs, to limit the true exposure to the bank insurance fund by limiting insurance on past-due accounts and brokered deposits. We are phasing out the direct risk to the bank insurance fund from the too-big-to-fail doctrine by 1996. So against that backdrop, limiting the number of insured accounts is a backward step, a further more in the wrong direction by this House, which may well have some undesired and unintended effects.

First of all, it will inconvenience and perhaps unduly penalize thousands of Americans, many of them elderly who saved diligently and invested wisely through a lifetime of sacrifice and discipline, because these Americans will be forced to seek out new banking relationships outside their home communities.

Second, it will cause a deposit flight from smaller banks, those which serve rural communities, to larger banks, those still perceived as too big to fail. And in the process undermine the strength and vitality of the small independent community-oriented banks, the very backbone of the American banking industry.

Mr. Chairman, we are headed toward a narrow BIF recap bill at this time and every Member of this body knows. We have done away with the concept of linkage, higher premiums and strengthening regulation in exchange for expanded powers and increased profitability. Deposit insurance reforms hurt small banks, hurt rural communities, will contribute to the credit crunch.

I urge my colleagues to defeat the amendment.

Mr. Speaker, I rise today to reluctantly oppose my friend from Ohio and distinguished ranking Republican on the Banking Committee, Mr. WYLIE. We've taken steps and adopted concrete measures in the Banking Committee to limit deposit insurance on pass-through accounts as well as brokered deposits. We're phasing out the too-big-to-fail doctrine by 1996. Against that backdrop, limiting the number of insured accounts is a step backwards, a further move in the wrong direction by this House, which may well have some undesired and unintended effects:

First, it may inconvenience and unduly penalize thousands of Americans, many of them elderly, who have saved diligently and invested wisely through a lifetime of sacrifice and discipline who will be forced to seek out new banking relationships, outside their home communities.

Second, it may cause a deposit flight from smaller banks serving rural communities to larger banks, those still perceived as too big to fail, undermining the strength and vitality of small, independent, community-oriented banks, the very backbone of the American banking industry. As the Banking Committee considered limitations to deposit insurance, we observed a miniature run on deposits from small depository institutions to large ones perceived by the general public to be too big to fail. This exodus has in many cases been largely comprised of small accounts of less than $100,000 which were taken from extremely healthy, well capitalized and well run rural banks. I believe we can safely conclude that the public views Congress' actions to limit the bank insurance fund's risk exposure as reneging on the full faith and guarantee of the U.S. Government. Naturally, the people were concerned with the safety of their savings, and moved their money into big safe havens.

Third, Mr. Chairman, we've headed now toward a narrow BIF recapitalization bill and every Member of this body knows it. We've broken the concept of linkage—higher premiums and strengthened regulation in exchange for expanded powers and increased profitability. Deposit insurance reforms hurt small banks and rural communities. At a time when lack of credit availability is stifling our economic growth and helping to drive the United States back into economic recession, we should hesitate to deprive the small rural banks, the engine of our economy, of fuel. Deposit insurance reforms coupled with a narrow bill may make marginally solvent banks insolvent and will make healthy banks significantly weaker. I urge defeat of the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I reluctantly rise to stand in opposition to this amendment, yet through the experiences that we have seen in many of the smaller banks in this country, it becomes painfully clear to me who suffers the most when we place these kinds of limits on deposits. In reality, some of us who have just come, who are fresh from the recent Freedom Bank takeover, understand that there were many nonprofit institutions who kept their money in Freedom Bank.

They suffered simply because they were not too big to fail. They failed because the insurance decided that these banks could be closed up.

I cannot believe today, as I said on this floor, that we in fact have done anything to solve the too-big-to-fail policy. I tend to think that ultimately even if we pass this piece of legislation, we will discover that those who are responsible for making the decisions will decide that the larger banks are too big to fail.

Let us do the fairest thing. Let us do the right thing. Let us vote against this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. COX].

Mr. COX of Illinois. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise today in opposition to the Wylie-Gonzalez amendment to tighten the limits on deposit insurance. There is no question that the sponsors of the amendment sincerely believe that this amendment will limit the exposure of the deposit insurance fund.

The fact of the matter is, there will be no limit whatsoever to the exposure of the fund. The real consequence will be movement of money from small financial institutions in the United States to large institutions where individuals believe that the institution will be protected by the too-big-to-fail policy.

The authors have tied this amendment to the date of the so-called elimination of the too-big-to-fail policy within the legislation. Please do not be fooled. To believe that the too-big-to-fail policy can be eliminated by this legislation, it cannot. Too big to fail will prevail whether or not it is included under the deposit insurance fund. We will simply turn to the Treasury to bail out financial institutions that risk the financial stability of the United States.

The concentration of capital that will be encouraged by the passage of this amendment will lead to far fewer financial institutions in the United States and the risk of allowing any one of those institutions to fail will be immense.

The responsible approach is to simply leave deposit insurance alone. If we can find a way to minimize exposure by eliminating too big to fail, let us do so. We simply cannot do it in this legislation, and another approach to reform ought to be taken rather than risking the money of the taxpayers. Oppose the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. LUKEN].

Mr. LUKEN. Mr. Chairman, the motive behind this amendment is the best. It is terrific. It is to reduce the exposure to the American taxpayer. If we believe it is going to do that, then vote for it.

The fact is, it is not going to do that. We are going to have a lot of money shifting back and forth. And in the end, what is going to happen if this amendment is adopted is the little guy and the medium-sized guy are going to be hurt. That is going to be the effect.

If we are looking for deposit insurance reform, we are not going to find it in this amendment. The fact is that in 1995, if anybody believes, whether now or in 1995, if one of these large institutions goes under that the Federal Government is not going to pick up the tab, then vote for it. But that is simply not going to happen.

I think the history of bailouts in this country demonstrates that clearly. Oppose the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Maryland [Mr. MCMILLEN].

Mr. MCMILLEN of Maryland. Mr. Chairman, I rise in opposition to the amendment. Yes, reform is desperately needed in the deposit insurance system, but this is not the answer. Reducing the insurance is not the answer.

The problem is in the price of the insurance. If we reduce the insurance, constituents will take their money out of the small and medium-sized banks and put it into the big centered banks. This is not real reform. This is the Trojan horse in the name of reform.

The fact is, unless we deal with the price of insurance, the fact is that there is a major taxpayer subsidy to the bigger banks in this country. We will not be dealing with the crux of the issue.

I urge my colleagues to oppose this amendment.

If we want real reform, let us do something about the price of the insurance.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MCCANDLESS].

Mr. MCCANDLESS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, Federal deposit insurance is important because of the protection it provides.

It is so important that, if the system becomes insolvent, depositors will be protected by the full faith and credit of the United States. That means the taxpayers.

Prior to 1933, when a bank became insolvent, they simply turned out the lights and locked the front door. Depositors lost everything.

Federal deposit insurance was created to protect depositors and to coax them back to banks.

It was never intended to be investment insurance.

Today, the system has been expanded to the point where a family of four can qualify for $1.4 million in deposit insurance coverage. That is far in excess of what was originally intended.

To no one's surprise, the banks and S&L's have joined with strong opposition to limits on deposit insurance.

Let's face it. The strongest commercial advantage that financial institutions have over other forms of investment is Federal deposit insurance and the full faith and credit protection provided by the taxpayers.

Banks and S&L's pay premiums for deposit insurance, but they pay nothing for full-faith-and-credit coverage.

They recognize a good deal when they see it, and consequently, don't want it changed.

Back in 1986, 1987, and 1988, we all heard the arguments of the S&L industry against reforms that would have greatly reduced the costs of the bailout.

Frankly, we are hearing many of the very same arguments today.

Unless we want to repeat history, we must learn from it.

The current expanded insurance coverage helps only a very small percentage of depositors, but it poses serious risks to the deposit insurance funds and, ultimately, to the taxpayers.

We need to reform the system, and to protect the taxpayers.

Limiting deposit insurance to $100,000 per person per depository institution, plus another $100,000 coverage for retirement accounts, is a reasonable and modest reform.

Therefore, I urge support for the Wylie amendment.

□ 1630

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Idaho [Mr. LAROCCO].

Mr. LAROCCO. Mr. Chairman, what goes too far is this amendment. We should take into consideration what the statistics are here on the accounts that are actually affected by this amendment. It is fewer than 1 percent of the accounts in U.S. banks that are affected by this amendment. Those are the accounts that are at risk here. At the same time it sends the wrong message. This amendment sends the wrong message to the American people. To make changes in the deposit insurance at this time when banks are shaky is the wrong message. It would have a negative impact. If there is any time we ought to have the status quo, it is now when the banks are shaky.

I do not think people in Idaho should pick up the Idaho Daily Statesman and see that Congress has rolled back bank insurance on their deposits. That is the wrong message. This amendment had thumbs down in the subcommittee, and in the full Committee on Banking, Finance and Urban Affairs it had thumbs down. It has been voted down. I say vote against this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 30 seconds to our distinguished chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Texas [Mr. GONZALEZ], for the purpose of a colloquy with the gentleman from California [Mr. MATSUI].

Mr. MATSUI. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. MATSUI. Mr. Chairman, I thank the gentleman for yielding to me.

I would like to engage the distinguished chairman of the Banking Committee in a brief colloquy.

By way of clarification, it is my understanding that it is the intent of this provision of H.R. 6 that whether a

trustee holds funds, as in IRA or 401(k) plans or whether the State or local government holds funds as required under section 457, that beneficiaries of IRA and 401(k) plans would all receive Federal deposit insurance. Is that a correct statement?

Mr. GONZALEZ. Yes, that is correct.

Mr. MATSUI. I thank the gentleman for his clarification.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Chairman, I certainly agree with the objective of this amendment. People with multiple accounts can move their money around and, for themselves, obtain deposit insurance. But that is also the weakness of the amendment. In order to secure deposit insurance, depositors will most certainly move those funds. It is the depository institutions, however, we must be concerned about, and I think that point has been well made, especially those small communities which depend upon small community banks.

Holders of multiple deposits will move their funds out of those small community banks to the big city, money center banks. That is a risk I think we cannot afford to take. Too many communities depend on those banks. Too many communities depend upon that kind of deposit.

I think we need reform. I think we need to reduce our exposure as a government, but this is not the way to do it. I urge Members to defeat this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Chairman, I thank the gentleman for yielding time to me. I rise in opposition to the amendment. Mr. Chairman, I think we are losing sight in this debate of the things already in the bill that reform deposit insurance. We put new requirements for passthrough insurance, we banned coverage for accounts in offshore branches, we mandated risk-based premiums, which is very important to reduce the risk to the fund. This amendment I do not believe is really reform, Mr. Chairman. Individuals then just shift accounts from one bank to a multiple number of banks.

I urge defeat of this amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Chairman, I thank the gentleman from Ohio for yielding time to me.

Mr. Chairman, there is a lot of misinformation going on around here. Some of the proponents indicate they do not want us to touch the deposit limits, that they do not want us to roll anything back. The amendment does none of those things. Basically, what it does is spread the risk so the millionaire has to go to five different institutions instead of having his $1 million insured at one institution, which was never the case, never the premise for deposit insurance.

As the gentleman from Ohio indicated, it was to protect that small saver, and now a family of four can have up to $1.4 million in one institution totally insured by the taxpayer. That is wrong.

The situation, my friends, is in excess of $3 trillion in all the banks that is insured, with zero in the deposit insurance system. Seventy-nine percent of all the households in this country have less than $25,000 on deposit. Only 6 percent have in excess of $100,000 on deposit. Who, my friends, are we protecting here? Clearly not the taxpayer. It is the wealthy and the banks. Mr. Chairman, I ask that the Members support the Wylie-Gonzalez amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1½ minutes to our distinguished colleague, the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL of California. Mr. Chairman, a good reform must be good in substance and it must be offered at a good time. I am very concerned about the time. Right now consumer confidence in the U.S. economy is at a very serious low. Right now depositors are not sure whether it is safe to keep money in accounts or not. I wish the economy were vibrant and upward trending. I cannot tell the Members that it is.

The proposal we have before us today would cause depositors to wonder, because the Federal Government would be messing with deposit insurance. It would not be that everyone would understand the sophisticated nuances. They would understand that the Federal Government was lessening the coverage deposit insurance used to provide.

I cannot accept that. Whatever the inherent logic of the proposal might be, this is not the time to do that. We run the risk of stampeding depositors and so collapsing a precarious situation.

One last point. If we did wish reform, the danger of this reform is that it is only symbolic. It does not demonstrably lower coverage. It only lowers coverage for those who are wealthy enough to have more than one $100,000 account, and who are not smart enough to place them in different banks.

To protect everyone else and uncover those, to send a signal of uncertainty at this time, are steps I cannot take.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, most Members realize that it was a mistake to have ever increased the FDIC insurance fund to limit to $100,000 per account. It was a mistake to have created a situation whereby the use of only limited imagination a family of four could create accounts in a single bank having a total value of up to $1.4 million with American taxpayers insuring every dime.

Mr. Chairman, I know that such a result was not intended and you know it. We have to muster the courage to change this and we have to do it now.

The banking industry says that limiting FDIC insurance to covering only one account, per person, per institution will result in a shuffling of deposits and accounts. Maybe so.

The banking industry says that the public will panic and their funds will flow out of banks. We hope that this will not occur, but these risks must be run.

This bill will not have addressed the greatest problem if we in this Congress do not do something to limit taxpayers liability to the banking industry.

Some say not now. I ask, if not now—when. Tomorrow? Tomorrow, the task will certainly be far more difficult.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Chairman, I rise in support of the amendment.

H.R. 6

Over 50 years ago when the FDIC was created, depositors were entitled to $2,500 of deposit insurance. President Franklin Delano Roosevelt opposed even this modest level of coverage, apparently because he feared that the extent of coverage would grow well beyond that level.

He was right. Today, a family of four can amass $1.4 million of deposit insurance coverage at a single institution. Deposits at money center banks and at large regional banks are fully insured—you all intents and purposes—because those institutions are deemed too big to fail.

As a result, there is little evidence of market discipline. Depositors need not concern themselves greatly with the safety and soundness of the institution in which they deposit their funds. A perverse incentive exists for depositors to place their funds in multiple accounts in the riskiest, most likely to fail institutions where those deposits will earn the greatest return. If the institution fails, the FDIC, and ultimately the taxpayers, guarantees that depositors will be made whole whether they have $1 or $1 million on deposit.

The amendment before us today is, I believe, the same amendment I offered at full Banking Committee markup. It attempts to ensure that on January 1, 1995, two things happen to inject a measure of market discipline. First, no bank will be deemed too big to fail. And, second, families of four will not be able to garner $1.4 million of deposit insurance in a single institution. This amendment should be adopted.

Mr. WYLIE. Mr. Chairman, I yield my remaining 30 seconds to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I rise in strong support of the Wylie-Gonzalez amendment.

As we listen to the debate one must wonder if Congress learned anything

from the savings and loan bailout. America's taxpayers are holding the bag for hundreds of billions of dollars because of our Federal insurance.

□ 1640

The modest amendment being offered by the gentleman from Ohio and the gentleman from Texas says that we are going to say to the richest Americans, "I am sorry, we have to draw the line: $200,000 is all we will protect."

For 99 percent of American savers and families, this amendment will not touch them. If there is going to be any panic over headlines concerning our action today, it will only be in Donald Trump's household.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Chairman, I rise in strong support of the Wylie-Gonzales amendment in the name of the consumer. By consumer I mean small depositor.

It was the small depositor who was intended to be protected, not those who can deposit hundreds and hundreds of thousands of dollars.

All I want to see is recognition of the original intent of deposit insurance. This amendment will probably fail, but it's the one way for us to demonstrate the need for deposit insurance reform.

Under the Wylie amendment, coverage would be limited to $100,000 per person per bank, with an additional $100,000 in coverage for retirement accounts. Over 94 percent of all deposits would be protected under this proposal.

Mr. Chairman, the Wylie amendment is an important element in our efforts to reform the deposit insurance system. At a time when the taxpayers are being asked to pay over $325 billion to clean up the savings and loans mess, and to lend $75 billion to the bank insurance fund, they should not be held liable, through deposit insurance, for the 6 percent of wealthier depositors whose accounts exceed $100,000.

The Wylie amendment will restore some market discipline to the banking industry by denying troubled banks easy access to guaranteed funds. Instead, these institutions will need to improve their management and increase their capital base to attract deposits.

The expansion of deposit insurance to cover virtually all deposits has contributed to the enormous liability that the taxpayers must assume when financial institutions fail. If my colleagues are serious about reducing that liability, then support for the Wylie amendment is a step in the right direction.

Mr. HUBBARD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, two speakers just in the last few minutes have said that this amendment is needed to protect us from the big, wealthy banks, the big banks in this country, the rich people, as the gentleman from Illinois [Mr. DURBIN] said, and one more time: the headlines last Friday across the Nation, "House Votes To Curb Bank Expansions."

If this amendment passes this afternoon, the headlines tomorrow will be, "House Cuts Bank Deposit Insurance."

Consumers and depositors all across this Nation would want us, as Congressmen today, to vote no on this amendment. Among those supporting our side in opposition to this are the American Association of Retired Persons, the American Federation of Independent Business, the National Farmers' Union, the National Farmers' Organization.

There are three reasons why banks fail, and that is certainly not because of multiple deposit insurance accounts: bad loans, bad investments, loans to Third World countries, corporate takeovers. No one has ever suggested that any bank in the Nation has ever failed because of multiple deposit insurance.

I urge my colleagues to vote "no".

The CHAIRMAN. All time has expired.

The question is on the amendments en bloc offered by the gentleman from Ohio [Mr. WYLIE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYLIE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 153, noes 264, answered "present" 2, not voting 14, as follows:

[Roll No. 372]

AYES—153

Abercrombie
Armey
Atkins
AuCoin
Ballenger
Bellenson
Bennett
Bentley
Bliley
Bonior
Boxer
Cardin
Carper
Clay
Clinger
Coleman (TX)
Collins (IL)
Conyers
Cox (CA)
Coyne
Crane
DeFazio
DeLay
Dellums
Derrick
Dickinson
Donnelly
Downey
Dreier
Durbin
Dymally
Early
Edwards (CA)
Engel
Evans
Fascell
Fawell
Foglietta
Ford (MI)
Frank (MA)
Franks (CT)
Gallo
Gejdenson
Gekas
Gephardt
Gingrich
Gonzalez
Goodling
Gradison
Guarini
Hayes (IL)
Hefley
Herger
Hochbrueckner
Houghton
Hoyer
Hughes
Hunter
Jenkins
Johnson (CT)
Johnson (TX)
Kanjorski
Kaptur
Kasich
Kildee
Kleczka
Kolbe
Leach
Lehman (CA)
Lehman (FL)
Lent
Lipinski
Livingston
Lowery (CA)
Markey
Martin
Matsui
Mavroules
McCandless
McCloskey
McCollum
McDermott
McGrath
McNulty
Meyers
Mfume
Miller (OH)
Miller (WA)
Mineta
Mink
Moakley
Molinari
Morella
Murphy
Nowak
Olin
Olver
Owens (NY)
Oxley
Packard
Payne (NJ)
Payne (VA)
Pease
Penny
Petri
Price
Rangel
Reed
Rhodes
Ritter
Rohrabacher
Roybal
Russo
Sabo
Santorum
Savage
Scheuer
Schroeder
Schulze
Schumer
Sensenbrenner
Shays
Shuster
Sikorski
Skaggs
Slattery
Smith (FL)
Solomon
Staggers
Stark
Stearns
Stokes
Studds
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Walsh
Washington
Waters
Waxman
Weiss
Weldon
Wolf
Wolpe
Wylie
Yates
Zimmer

NOES—264

Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Bacchus
Baker
Barnard
Barrett
Barton
Bateman
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Boehlert
Boehner
Borski
Boucher
Brewster
Broomfield
Browder
Brown
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Carr
Chandler
Clement
Coble
Coleman (MO)
Collins (MI)
Combest
Condit
Costello
Coughlin
Cox (IL)
Cramer
Cunningham
Darden
Davis
de la Garza
DeLauro
Dicks
Dingell
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Duncan
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Espy
Ewing
Fazio
Feighan
Fields
Fish
Flake
Frost
Gallegly
Gaydos
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Gordon
Goss
Grandy
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefner
Henry
Hertel
Hoagland
Hobson
Holloway
Horn
Horton
Hubbard
Huckaby
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kennedy
Kennelly
Klug
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lloyd
Long
Lowey (NY)
Luken
Machtley
Manton
Marlenee
Martinez
Mazzoli
McCrery
McCurdy
McDade
McHugh
McMillan (NC)
McMillen (MD)
Miller (CA)
Mollohan
Montgomery
Moody
Moorhead
Moran
Morrison
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Oberstar
Obey
Ortiz
Orton
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Pelosi
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Porter
Poshard
Pursell
Quillen
Rahall
Ramstad
Ravenel
Ray
Regula
Richardson
Ridge
Riggs
Rinaldo
Roberts
Roe
Roemer
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Serrano
Sharp
Shaw
Sisisky
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)

Smith (TX)	Tallon	Walker
Snowe	Tanner	Weber
Solarz	Tauzin	Wheat
Spence	Taylor (MS)	Whitten
Spratt	Taylor (NC)	Williams
Stallings	Thomas (GA)	Wilson
Stenholm	Thomas (WY)	Wise
Stump	Thornton	Wyden
Sundquist	Upton	Yatron
Swett	Vander Jagt	Young (AK)
Swift	Volkmer	Young (FL)
Synar	Vucanovich	Zeliff

ANSWERED "PRESENT"—2

Brooks	Cooper

NOT VOTING—14

Bryant	Dwyer	Michel
Campbell (CO)	Ford (TN)	Mrazek
Chapman	Green	Slaughter (VA)
Dannemeyer	Hopkins	Thomas (CA)
Dixon	McEwen	

□ 1701

Messrs. WHEAT, INHOFE, and McDADE changed their vote from "aye" to "no."

Mrs. BOXER, Mrs. UNSOELD, Mr. EVANS, Ms. KAPTUR, Mrs. COLLINS of Illinois, and Mr. HAYES of Illinois changed their vote from "no" to "aye."

So the amendments en bloc were rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 14 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. DORGAN OF NORTH DAKOTA

Mr. DORGAN of North Dakota. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. DORGAN of North Dakota: Page 452, after line 9, insert the following new section (and conform the table of contents accordingly):

SEC. 508. PROHIBITION AGAINST HIGHLY LEVERAGED FINANCING.

The Federal Deposit Insurance Act is amended by inserting after section 41 (as added by section 512 of this Act) the following:

SEC. 42. PROHIBITION AGAINST HIGHLY LEVERAGED FINANCING.

"(a) PROHIBITION.—No insured depository institution and no affiliate of any insured depository institution may make any loan, extend any credit, or make any investment in connection with any highly leveraged financing transaction.

"(b) HIGHLY LEVERAGED FINANCING TRANSACTION DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'highly leveraged financing transaction' means any transaction—

"(A) which involves the buyout, acquisition, or recapitalization of any business; and

"(B) which

"(i) results in the business having a liabilities to assets ratio exceeding 0.75;

"(ii) increases the liabilities of the business by at least 100 percent, and results in the business having a liabilities to assets ratio exceeding 0.50; or

"(iii) has been designated by an appropriate Federal banking agency as a highly leveraged financing transaction.

"(2) DE MINIMUS EXCEPTION.—For purposes of this section, the term 'highly leveraged financing transaction' does not include any transaction involving loans and investments not exceeding $20,000,000 in the aggregate.".

The CHAIRMAN. Under the rule, the gentleman from North Dakota [Mr. DORGAN] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

The Chair recognizes the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, 2 years ago a fellow came to my office who was trying to buy one of the bigger corporations in America in an LBO. He said to me this is not going to involve junk bonds. He was actually going to buy this company, load it with several billion dollars in debt, but he said it is not going to involve junk bonds. That made it all right, I guess.

I said I know, I understand it is not going to be junk bonds, it is syndicated fee-driven junk debt. It had gotten syndicated bank debt called highly leveraged transactions, and he bought the company, loaded it with debt. The banks were left with the HLT's. And, incidentally, now that debt is selling at about 80 cents on the dollar.

The point of the amendment I offer today with my colleagues, the gentleman from Wisconsin [Mr. OBEY] and the gentleman from Minnesota [Mr. PENNY], is an amendment that says that we do not believe highly leveraged transactions for the purpose of hostile takeovers and leveraged buyouts and that kind of activity ought to be done by the banks in this country with insured deposits.

We believe banks and their insured deposits and their affiliates ought not be involved in that kind of risk lending.

Why should we be recapitalizing, pouring public money in the front end but do nothing on the back end to stop that kind of speculation?

We went through a decade, the decade of the 1980's, that was a decade, unfortunately, of greed and excess and leverage and debt. And that was partly aided by the big banks.

Some $100 billion of HLT's exist in the portfolios of the big banks in this country. The 25 largest banks have $65 billion of these HLT's. And interestingly enough, several of them have highly leveraged transactions that exceed all of their capital.

My amendment asks this House whether we ought to continue to guarantee the deposits, the insured deposits of these institutions, while they make these kinds of risky loans called HLT's for the purpose of hostile takeovers and acquisitions?

The answer ought to be "no."

The core-bank proposal went down. This is the last stop on the station. If you want to decide that, as we recapitalize, we ought to stop this kind of nonsense vote for this amendment. A thousand banks have failed, hundreds more are on the brink of failure and a couple of thousand have had their capital eroded because of this kind of activity.

A recent report in the last week said this about banks:

They are in trouble because of a series of ill-fated decisions in the last decade to lend money to Third World countries, to corporate takeover artists and to real estate developers who ended up not being able to pay.

This amendment takes one of those provisions, that is, the HLT lending, the highly risky lending, of insured deposits for hostile takeover artists and says, "We want it to stop." If that goes on, it ought to go on with other money that is not going to be ultimately insured by the Federal Government.

Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. I thank the gentleman for yielding.

Mr. Chairman, this amendment simply says the taxpayer-insured funds ought to be financing investments that will help the economy grow, not those that will create mountains of corporate debt so that big business can buy up and chew up and spit out small firms and the jobs that go with them.

Banks ought to be banks; they ought not to be casinos.

This amendment has a small-business exemption which is important.

I hope that the House will support the amendment. I congratulate the gentleman for offering it.

Mr. DORGAN of North Dakota. I thank the gentleman from Wisconsin [Mr. OBEY].

Mr. Chairman, I might say this amendment has a $20 million exemption, a de minimis exemption.

So with respect to those small- and medium-size firms, they are not involved in this. We are not catching them in the net.

We are talking about the $500 million, the $200 million, the $1 billion debt instruments that I think are far too risky for us to continue to allow insured deposits to have to back them.

Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. PENNY], a coauthor of this amendment.

Mr. PENNY. I thank the gentleman for yielding.

Mr. Chairman, because of my strong interest in this issue, I asked the General Accounting Office to undertake a study of hostile takeovers and leveraged buyouts. I was joined in that request by 51 other Members of Congress.

Let me read to you from page 2 of the executive summary on that study, in which it indicates:

In the LBOs we studied, the purchasers bought out the target companies equity holders with money from loans and bond issues. In Phillips' recapitalization, the company exchanged debt securities for nearly half of its outstanding common stock in

order to avoid an LBO. For all the cases we studied, the equity holders, through selling or exchanging the common stock, earned premiums ranging from about 36 percent to about 119 percent. The surviving companies' capital structures shifted so that debt became the primary source of funding, and debt reduction became one of the companies' highest priorities. The companies employed such strategies as asset sales, cost savings programs, employee layoffs, and spending restrictions to help pay off debt. Phillips and Safeway are currently operating profitably, but the remaining companies have declared bankruptcy and are now operating under bankruptcy court protection.

Mr. Chairman, these are not the kinds of investments we ought to make with federally insured deposits. For that reason I urge support of the Dorgan amendment.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] is recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge a "no" vote on this amendment. I believe it is premature at best. We have had no hearings on it in the Committee on Banking, Finance and Urban Affairs. Currently the banking regulators, acting jointly, have issued circulars, and we are in the middle of a comment period on this particular issue. I believe, as I said, it is premature.

This amendment would prohibit affiliates of depository institutions from engaging in highly leveraged transactions.

□ 1710

Mr. Chairman, the amendment, as defined, would prohibit any bank merger. The amendment prohibits any depository institution from engaging in a transaction that results in a business having a liability-to-asset ratio exceeding 75 percent. As no bank in this country has capital in excess of 25 percent, no bank could ever merge under this amendment. I do not think that is what the author intended, but that would be the effect of the amendment. If an affiliate of a bank, which is separately capitalized and subject to numerous fire walls, is also prohibited from providing financing for such activities, then I think the amendment goes too far again.

As I have said, we have held no hearings on it. We really do not know the seriousness of the impact it might have, and I would urge a no vote until we could have an opportunity to see what the regulators come up with and what their comment period results in.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman and Members, the hour is getting late. We are all tired. We are trying to consider things on which at this point in time, as the gentleman from Ohio [Mr. WYLIE] said, there have been no hearings. We do not know what the impact of this amendment is.

The gentleman from Ohio [Mr. WYLIE] has already explained one impact, as far as banks being able to merge under this amendment. We cannot stereotype this type of lending, believe me. We cannot say that all leveraged buyouts are bad and wrong.

Today the cable television industry, one of the most profitable industries in America today because it is growing, is operating on less leverage than it should have probably. Under this amendment they would have to nearly go out of business. Cable television companies would not be able to grow and expand.

So, I would say this is a much more serious amendment than it would appear to be, and then, too, let me talk about the regulators.

The regulators today have the power to regulate this type of transaction, and they are doing it all over the country. We get complaints from New England and other places, "Well, there's a credit crunch. The regulators are too hard on us." The regulators today are very sensitive to just this type of transaction, and they are regulating it.

Mr. Chairman and Members, this is no time to micromanage the banking business, or else we are going to be spending all our time and energies in the House trying to tell banks what to do and what not to do. We have legitimate and eligible regulators to do this job. If they cannot do it, then let us come back and do it, but I must say this is a flawed amendment, and it deserves to be defeated.

Mr. WYLIE. Mr. Chairman, I think this outright prohibition on the depository institution and all of its affiliates is unnecessary, and I urge a no vote.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Dakota [Mr. DORGAN].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 15 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. NEAL of Massachusetts: Page 49, after line 9, insert the following new section (and conform the table of contents accordingly):

SEC. 123. REPORTS OF FINANCIAL CONDITION BY LARGE INSTITUTIONS ENGAGED IN INTERSTATE BANKING.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(10) CONDITION REPORTS BY LARGE INSURED INSTITUTIONS ENGAGED IN INTERSTATE BANKING.—

"(A) COVERED INSTITUTIONS.—For purposes of this paragraph—

"(i) INTERSTATE BRANCHING INSTITUTION.—The term 'covered interstate branching institution' means an insured depository institution that has total assets of $1,000,000,000 or more, as of its most recent fiscal year, and maintains branches in more than one State.

"(ii) INTERSTATE SUBSIDIARY INSTITUTION.—The term 'covered interstate subsidiary institution' means an insured depository institution that has total assets of $500,000,000 or more, as of its most recent full fiscal year, and it is a subsidiary of a holding company that controls insured institution subsidiaries in more than one State and has consolidated assets of $1,000,000,000 or more, as of the holding company's most recent full fiscal year.

"(iii) DUAL COVERAGE.—An insured depository institution that satisfies the criteria of both clauses (i) and (ii) of this subparagraph shall be deemed to be a covered interstate branching institution.

"(B) INTERSTATE BRANCHES: QUARTERLY LOAN DATA.—A covered interstate branching institution shall include in each quarterly report of financial condition required by this subsection the following loan categories, listed separately for each State within which it maintains one or more branches—

"(i) LOAN DATA ITEMS.—(I) The aggregate dollar amount of the institution's outstanding in-State loans in regard to such State, (II) the interest and fee income earned on such loans, (III) the dollar amount of such loans with nonaccrual status, and (IV) the net charge-offs for such loans.

"(ii) LOAN CATEGORIES.—(I) Construction loans, (II) commercial mortgage loans, (III) residential mortgage loans, (IV) farmland mortgage loans, (V) agricultural production loans, and (VII) consumer loans.

"(C) DEFINITION OF IN-STATE LOANS.—For purposes of subparagraph (B) the term 'in-State loan' means a loan that is made to a business entity that is engaged in business in the State, an agricultural loan to an entity in the State, a loan that is secured with property located in the State, and a loan made to an individual who is a resident of the State.

"(D) INTERSTATE BRANCHES: QUARTERLY DEPOSIT DATA.—A covered interstate branching institution shall also include in each quarterly report of financial condition required by this subsection the following deposit data items for each of the following deposit categories, listed separately for each State within which it maintains one or more branches—

"(i) DEPOSIT DATA ITEMS.—(I) The aggregate dollar amount of deposit balances at the institution's branch offices located within each State, and (II) the interest paid on such deposit balances.

"(ii) DEPOSIT CATEGORIES.—(I) Demand deposits (deposit balance data only), (II) interest-bearing transaction accounts, (III) savings deposits, (IV) time deposits under $100,000, (V) time deposits of $100,00 or more, and (VI) State and local government deposits (deposit balance data only).

"(E) INTERSTATE BRANCHES: OTHER QUARTERLY DATA.—A covered interstate branching institution shall include in its report of financial condition required by this subsection the following financial data, listed separately for each State within which it maintains one or more branches—

"(i) the aggregate dollar amount the institution's real estate owned in each State not

including property owned by the institution for banking operations; and

"(ii) the institution's income from service charges on deposit accounts at the institution's branch institution.

"(F) INTERSTATE BRANCHES AND INTERSTATE SUBSIDIARIES: ANNUAL LOAN DATA.—A covered interstate subsidiary institution shall include in its report of financial condition required by this subsection for the fourth quarter of each calendar year the following information for its home State and a covered interstate branching institution shall include in its report of financial condition required by this subsection for the fourth quarter of each calendar year the following information listed separately for each State within which it maintains one or more branches—

"(i) SMALL BUSINESS LOANS.—The institution's total number and aggregate dollar amount of commercial loans and commercial mortgage loans outstanding to small businesses whose principal place of business is located within such State; itemized separately for—

"(I) commercial loans; and

"(II) commercial mortgage loans; and further itemized separately for—

"(I) small businesses with annual sales of $250,000 or less, and

"(II) small businesses with annual sales of more than $250,000.

"(ii) SMALL FARM LOANS.—The institution's total number and aggregate dollar amount of agricultural production loans and farmland mortgage loans outstanding to small farms whose principal place of business is located with such State; itemized separately for

"(I) agricultural production loans; and

"(II) farmland mortgage loans.

"(G) SMALL BUSINESS LOANS BY METROPOLITAN AREA.—The small business loans required by subparagraph (F)(i) shall be further itemized (according to the principal place of business of the small business borrowers) separately for—

"(i) each metropolitan area of the State,

"(ii) the low and moderate income portion of each such metropolitan area, and

"(iii) the minority portion (if any) of each such metropolitan area.

"(H) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—The Federal banking agencies may require insured depository institutions to report additional information beyond the requirements of this paragraph for the purposes of monitoring the insured condition of the depository institutions engaged in interstate branching and monitoring the volume of credit provided at the State and local community level by institutions engaged in interstate banking through either separate insured institution subsidiaries or interstate branching, and for implementing Federal antitrust laws.

"(I) ADJUSTMENT OF LOAN CATEGORIES.—The Federal banking agencies may adjust the loan category definitions prescribed by this paragraph to reflect changes in loan category definitions or classifications generally employed in the reports of financial condition required by this subsection, except any such adjustments must be consistent with the purposes of this paragraph.

"(J) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'small business means an enterprise with annual sales of $20,000,000 or less;

"(ii) the term 'small farm' means a farm business with annual sales of $500,000 or less;

"(iii) the term 'commercial loan' means a loan that is reportable as a commercial and industrial loan;

"(iv) the term 'agricultural production loan' means a loan that is reportable as a loan to finance agricultural production and other loans to farmers;

"(v) the term 'farmland mortgage loan' means a loan that is reportable as a real estate loan secured by farmland;

"(vi) the term 'metropolitan area' means a primary metropolitan statistical area, or consolidated metropolitan area, or consolidated metropolitan statistical area, as defined by the Secretary of Commerce;

"(vii) the term 'commercial mortgage loan' means a loan that is reportable as a real estate loan secured by nonfarm residential properties;

"(viii) the term 'construction loan' means a loan that is reportable as a real estate loan secured by construction and land development;

"(ix) the term 'consumer loan' means a loan that is reportable as a loan to individuals for household, family, and other personal purposes;

"(x) the term 'non-metropolitan portion' means the portion of a State that lies outside the metropolitan areas;

"(xi) the term 'low and moderate income area' means census tracts, as defined by the Secretary of Commerce, whose median family income is less than or equal to 80 percent of the median family income of the metro area in which they are located;

"(xii) the term 'minority area' means all census tracts as defined by the Secretary of Commerce in which minority persons compromise 75 percent or more of the resident population;

"(xiii) the term 'home State' means with respect to an insured depository institution that is a subsidiary of a holding company, the State in which the insured institution's deposit balances are principally located; and

"(xiv) the term 'reportable' refers to the reporting classifications employed in the reports of financial condition submitted pursuant to this subsection.".

The CHAIRMAN. Under the rule, the gentleman from Massachusetts [Mr. NEAL] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. NEAL].

Mr. NEAL of Massachusetts. Mr. Chairman, the amendment I introduce deals with two basic issues: safety and soundness, and credit access.

Mr. Chairman, all of us in this Chamber who have returned home during the past few weekends have been besieged by complaints about the credit crunch. Thousands of small business people across this country have been sentenced to death row. Mr. Chairman, good credit risks are being routinely denied across America. Loans are being called, and individuals who are current in their interest and principal payments are being told they have to liquidate their businesses.

Two years ago I warned Alan Greenspan about the credit crunch. Two weeks ago he acknowledged it. Two weeks ago President Bush acknowledged the credit crunch, and 2 weeks ago Secretary Brady acknowledged the credit crunch. Banks blame the regulators, regulators blame Congress, Washington blames the banker, and small businesses are being sentenced to credit capital punishment.

The fact is that we have no reliable data on which to measure this problem. Interstate branching is inevitable, and these data will be even harder to retrieve.

This amendment is not duplicative, despite what my colleagues might hear in a few moments. It only deals with small business and small farmers.

We have heard a lot during the past few weeks about helping the bankers. The truth is that we ought to be prepared to help small business people and small farmers across this country, and I urge a "yes" vote for the Neal amendment.

Mr. NEAL of Massachusetts. I yield 30 seconds to the gentleman from Texas [Mr. GONZALEZ], the chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, the Neal amendment is an extremely important addition to this bill—an amendment that addresses the serious lack of data on small business lending by the Nation's banks.

Small businesses are the lifeline of community development and they're invariably the first to be cut off when credit tightens. In fact, small business, particularly in low-moderate income areas, are more or less in a permanent credit crunch, good times or bad.

The Neal amendment recognizes that we need to monitor the pattern of deposits and loans as big banks move interstate and operate branches in scattered geographical locations.

Not only is this amendment important to monitor credit access, but it requires the reporting of data that will be vital for safety and soundness purposes. This enhances the call reports, breaks the commercial loans into size categories, and gives regulators key data on concentrations of credit and an ongoing means to monitoring the condition of institutions.

The amendment should be adopted.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield a minute and a half to the distinguished gentleman from Florida [Mr. IRELAND], the ranking member on the minority side.

Mr. IRELAND. Mr. Chairman, I thank the gentleman for yielding time, and I say to my colleagues that we hold the final responsibility for protecting our Nation's 20 million small enterprises and the workers they employ. The Neal amendment will help us to fulfill this responsibility.

The amendment requires billion-dollar financial institutions that are engaged in interstate branching to produce annual reports on all loans

made to small businesses, small farms, and small disadvantaged businesses by geographic and metropolitan areas.

The amendment does not ask every bank in America to collect and produce reams of irrelevant information.

It simply makes it possible to track lending activity within a community. It is safeguard against a megabank coming into a location, sucking up all the deposits, and then failing to put money back into that community through small-business loans.

We are the gatekeepers to our Nation's future. And that future is irrevocably tied to the well-being of small businesses throughout this land.

On behalf of those small enterprises and for the sake of the millions of workers who help them succeed, I most strongly urge my colleagues to support the Neal amendment.

□ 1720

Mr. NEAL of Massachusetts. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the amendment. I believe that it is time for us to understand that there is just not enough data to allow us to be able to adjust problems before they become magnified. Recent studies clearly indicate that there is a necessity for this information, that there are certain communities and certain businesses in those communities that are not currently being served. Mr. Chairman, I ask all my colleagues to join with me in support of this amendment. It is a good amendment. It strengthens the banking bill, and I think the gentleman from Massachusetts [Mr. NEAL] has done a good job. Let us support him.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts [Mr. NEAL]. I think it is proper and prudent, and I urge an "aye" vote.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield 45 seconds to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I support the gentleman's amendment, as I did in the Banking Committee when he proposed the language already in the bill. There are two groups we pay a lot of lip service to here in Congress, but we often fail to help them when they need it most: Those groups are veterans and small business owners.

This amendment would have large interstate banks report quarterly information on small business lending. Small business loans would be reported by State and metro area. Within each metro area, small business loans would be reported as a subtotal for all low- and moderate-income census tracts and for all minority census tracts. Loans for small farms would be reported by State and listed separately for agricultural production loans and farmland mortgage loans.

I recognize that banks will not be entirely happy with this provision. They do a large amount of reporting already. But small business has been starving for credit lately, and we need to at least know where the loans are going. We need the information to make better policy, and not merely shoot in the dark. Small business is the most important growth industry in this country. For a State like Pennsylvania, where wages from traditional industries fed fathers and mothers and generations before us, we need small business growth to produce the major industries of tomorrow. The economy is in transition. We cannot depend solely on the traditional industries. Many are declining. We need capital for small business growth, and this amendment will shed light on the situation.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I wish to go on record at this time as being in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 10 minutes.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are in the process of loading up the canoe to sink it.

The Banking Committee print which was adopted already provides that the banks will make reports to the regulators on the amount of lending to small businesses and farms. This amendment is a duplicative at best, but it does target some banks which are going to branch interstate. It would require that they report all net lendings to small businesses, farms, net write-offs of loans, income on fees, income from loans, the dollar amount of deposit balances, and the interest paid on these deposits, just to name a few.

Why is this amendment necessary? This information is already being provided to the regulators. What it will do is ultimately pass the cost of all this information on to the consumers.

Banks comply with volumes of reporting requirements now. This amendment would do nothing but add more paperwork and more burden already imposed on the banks. H.R. 6 calls for a study of the paperwork cost to banks and Federal regulators in meeting current requirements. This will add to the cost of the study, in addition to adding to the cost of regulatory reporting by the banks.

Mr. Chairman, I urge a no vote on the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN, The question is on the amendment offered by the gentleman from Massachusetts [Mr. NEAL].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 20 printed in House Report 102-281.

AMENDMENTS, EN BLOC, AS MODIFIED, OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer amendments en bloc as modified.

The CHAIRMAN. The Clerk will designate the amendments en bloc, as modified.

The Clerk designated the amendments, en bloc, as modified.

The CHAIRMAN. The Clerk will report the amendments, en bloc, as modified.

The Clerk read as follows:

Amendments, en bloc, as modified, offered by Mr. GONZALEZ: AMENDMENT NUMBERED 20 IN REPORT 102-281 WITH GERMANE MODIFICATION, OFFERED BY MR. TOWNS:

Page 460, after line 21, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

(5) Insured deposits of nonprofit organizations.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by adding at the end the following new paragraph:

"(8) INSURED DEPOSITS OF NONPROFIT TAX-EXEMPT ORGANIZATIONS.—

"(A) IN GENERAL.—Notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any 1 depositor, each of the deposits at any minority depository institution of any depositor which—

"(i) is an organization referred to in section 501(c)(3) of the Internal Revenue Code of 1986; and

"(ii) is exempt from tax under section 501(a) of such Code,

shall be an insured deposit to the extent the aggregate amount of the deposits of such depositor at such institution do not exceed $500,000.

"(B) MINORITY DEPOSITORY INSTITUTION.—For purposes of this paragraph, the term 'minority institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(i) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(c) MINORITY. The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.".

"(D) EFFECTIVE DATE.—This paragraph shall become effective only when its costs are fully offset in each fiscal year through fiscal year 1996."

AMENDMENT TO H.R. 6, AS REPORTED OFFERED BY MR. DONNELLY

Page 522, after line 9, add the following new subtitle:

Subtitle K—Bank and Thrift Employee Provisions

SEC. 696. CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS.

(a) CONTINUATION COVERAGE.—The Federal Deposit Insurance Corporation—

(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

(b) DEFINITIONS.—For purposes of this section—

(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

(A) such entity holds substantially all of the assets or liabilities of such institution, and

(B) such entity is—

(i) the Federal Deposit Insurance Corporation;

(ii) any bridge bank, or

(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

(2) FAILED DEPOSITORY INSTITUTION.—The term "failed depository institution" means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver has been appointed.

(3) BRIDGE BANK.—The term "bridge bank" has the meaning given such term by section 11(i) of the Federal Deposit Insurance Act.

(c) NO PREMIUM COSTS IMPOSED BY FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 occurred before, on, or after such date.

Mr. GONZALEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendments en bloc, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. DONNELLY. Mr. Chairman, I have a point of parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, I am the author of the second amendment in the en bloc amendments. I would like to ask the Chair, how would the time be divided?

The CHAIRMAN. The understanding of the Chair is that the rule describes the situation, and half of the 20 minutes, or 10 minutes, would go to the gentleman from Texas [Mr. GONZALEZ] and half to the gentleman from Ohio [Mr. WYLIE].

Mr. DONNELLY. I thank the Chair.

The CHAIRMAN. The gentleman from Texas [Mr. GONZALEZ] is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I offer an en bloc amendment consisting of two amendments. The first is a modified amendment offered by the gentleman from New York [Mr. TOWNS] which would provide an aggregate amount of deposit insurance up to $500,000 for deposits of nonprofit organizations in minority banks. The second amendment within the en bloc amendments is offered by the gentleman from Massachusetts [Mr. DONNELLY], which will provide for a continuation of employee health plan coverage in cases involving failed financial institutions.

Mr. Chairman, I urge the adoption of the en bloc amendment, and I reserve the balance of my time.

PARLIAMENTARY INQUIRIES

Mr, KLECZKA. Mr. Chairman, I have a parliamentary inquiry.

Mr. Chairman, the chairman of the Banking Committee is combining two amendments. Under this rule, is it possible to ask for a division on the two amendments?

The CHAIRMAN. The Chair has referred to the rule, and the rule makes the amendment en bloc not subject to a division of the question.

Mr. KLECZKA. Mr. Chairman, as a further parliamentary inquiry of the Chair, the Members who would be opposed to the Towns amendment would have to vote against the en bloc amendment, and then the gentleman from Massachusetts [Mr. DONNELLY] could bring his amendment back to stand alone?

The CHAIRMAN. The Chair cannot advise the Members.

Mr. DONNELLY. Mr. Chairman, I have a point of parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, it is my understanding under the rules of the House that I have the right, irrespective of the actions of the House, to offer my amendment as it stands alone after the disposition of the en bloc amendment.

The CHAIRMAN. The gentleman is correct.

Mr. DONNELLY. I thank the Chair.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] is recognized for 10 minutes.

Mr. WYLIE. Mr. Chairman, while I understand that modifications have been made to both of these amendments, the Towns amendment, as I read it, states that notwithstanding any limitation in H.R. 6 or any other provision of law relating to the amount of deposit insurance available for the account of any other depositor, each of the deposits of any nonprofit organization shall be insured up to $500,000 if the deposits are made with a minority-owned institution.

With all due respect, Mr. Chairman, I must oppose this amendment.

The second amendment would broaden the FDIC's insurance coverage when closing banks so that the FDIC, in effect, would become a social welfare agency. Under current law, businesses that close because of bankruptcy do not enjoy health benefits under COBRA. The failure of a bank, I think, should be very similar to this.

Under the second amendment, those employees of failed banks would be covered under COBRA and, therefore, would be covered for health insurance. There is no indication of who is going to pay for it, but regardless they would be covered by health insurance.

□ 1730

Mr. Chairman, for these reasons I oppose the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Chairman, may I inquire how much time we have on this side?

The CHAIRMAN. The gentleman from Texas [Mr. GONZALEZ] has 9 minutes remaining.

Mr. GONZALEZ. Mr. Chairman, I yield 4½ minutes to the gentleman from New York [Mr. TOWNS], and ask that he be allowed to control that time.

The CHAIRMAN. Without objection, the gentleman from New York [Mr. TOWNS] may control the time.

There was no objection.

Mr. TOWNS. Mr. Chairman, I withdraw my original amendment and urge my colleagues to support the compromise amendment offered by the chairman of the Banking Committee. This amendment would provide up to $500,000 in deposit insurance to charities and other nonprofit organizations who hold accounts in minority owned banks.

I was drawn to this issue upon the closing of Freedom National Bank. When Freedom National Bank, a Harlem-based minority owned institution, failed last November, over 35 nonprofit institutions lost over $14.7 million. Freedom depositors with accounts over $100,000 included churches, universities scholarship foundations, veterans service organizations, homeless shelters, long-term care facilities, housing development corporations, senior centers, and day-care facilities. For many people, these organizations provide the only safety net which has not been destroyed by Federal and State cutbacks.

Nonprofit entities often receive Federal funds which allow the organizations to operate a host of federally assisted antipoverty programs. Generally, State and Federal laws require these groups to keep separate accounts for each program. However, the FDIC

policy combines different accounts into a single account. The charitable institution is deemed to be the account holder.

In January, the FDIC saw the foolish and callous effects of this policy and released a statement that acknowledged that there were inequities and offered to provide uninsured freedom depositors up to 50 percent on amounts over $100,000. Half was not good enough. The chairman of the FDIC pledged to "continue to study options to provide additional protection to charitable organizations." The FDIC has failed to offer any measure which would protect charitable organizations.

Some will say that we cannot afford to provide additional depository insurance coverage for these institutions. If we fail to cover the charities, the schools, and the churches, who will? We must not allow the church building fund, the school lunch program funds, the senior center's Meals on Wheels Program to be sacrificed in order to be handed over to cushion the financial blow for others—to hide the bad commercial real estate loans, the shady deals, and the poorly secured investments.

Mr. Chairman, this amendment corrects a longstanding wrong by protecting those institutions which provide the lifeblood for the poor and elderly all over this Nation.

Mr. Chairman, I think this is a good amendment. It makes a lot of sense. I think if we are able to do this, we will protect a lot of agencies.

What we have now is the Federal Government taking from these agencies money that they have given to them and putting it back in other organizations that do not need it as much as they need it. I think this legislation makes good sense.

Mr. Chairman, I ask Members to support this amendment. It will serve as a first step in providing a fair deal for so many institutions which provide the lifeblood of the poor and elderly in communities all over the Nation.

Mr. GONZALEZ. Mr. Chairman, I yield 4½ minutes to the gentleman from Massachusetts [Mr. DONNELLY], and I ask that he be allowed to control that time.

The CHAIRMAN. Without objection, the gentleman from Massachusetts [Mr. DONNELLY] may control the time.

There was no objection.

Mr. DONNELLY. Mr. Chairman, my amendment deals with an ambiguity in present law with regard to FDIC and the bridge bank and subsequent corporations' responsibility under the COBRA health insurance laws of 1985.

As Members will remember, as this body passed in 1985, it was signed by the President, we mandated that corporations and companies that laid off employees offer to their laid-off employees continuation of health insurance benefits. This continuation of health insurance benefits came at no cost to these companies or corporations. The only people that paid were the individuals who were laid off. They paid the full cost. The advantage to the laid-off employee was they could pay at group rates. It was determined in 1985, that this was sound public policy.

The FDIC has now taken the position that it is exempt from these COBRA laws that we mandate on every private company in the United States of America. It would seem to me at a time when this institution and this Government is under attack by the American people for continuing to exempt itself from laws that it mandates on other people, that one sector of the economy which is being devastated by layoffs, which just this last year 40,000 people lost their jobs in the banking industry in the United States, 40,000 people were left without adequate health insurance, that we can provide them today with adequate health insurance at no cost to the Federal Government, at no cost to the bridge banks, but with only a cost to the laid-off employee at a group rate.

Mr. Chairman, this is sound public policy. It is today as it was in 1985. We should not exempt an entity from the law that General Motors and Procter & Gamble and every other company in this country adheres to.

Mr. WYLIE. Mr. Chairman, I ask unanimous consent to reclaim 1 minute of my time.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. KLECZKA], and in doing that, I would ask who pays for these benefits if the Federal Government does not?

Mr. KLECZKA. Mr. Chairman, I find myself in a difficult position. I support the Donnelly amendment. However, I have to oppose the amendment by my good friend, the gentleman from New York [Mr. TOWNS]. Because of the amendments being en bloc, the only decision the House has to make is to vote against the entire amendment, and then the gentleman from Massachusetts [Mr. DONNELLY] will be permitted to offer his as a stand-alone amendment.

The House just rejected by a wide margin any limitation or spreading around of the risk of deposit insurance. Now in the same breath and the same day on the same floor we are going to extend to nonprofit organizations up to $500,000 of deposit insurance, where the taxpayers in one single account are limited to $100,000.

This bill, as we have said over and over, contains a $70 billion Treasury loan. Many of us believe the banks will never be able to pay that back. So the bill will be foisted upon the taxpayers.

So the taxpayers who will be footing the tab in future years are limited to deposit insurance of $100,000 per account, while nonprofit organizations, who pay no tax, will be given $500,000. That does not make sense at all.

Mr. GONZALEZ. Mr. Chairman, might I inquire how much time I have remaining?

The CHAIRMAN. The Chair will advise that the gentleman from Texas [Mr. GONZALEZ] controls the time under the rule. The gentleman from Texas did not designate anyone to use this time, but merely yielded 4½ minutes to the gentleman from New York [Mr. TOWNS], who yielded back 1 minute, and yielded 4½ minutes to the gentleman from Massachusetts [Mr. DONNELLY], who used 2 minutes.

Mr. GONZALEZ. Mr. Chairman, I designate 2½ minutes to the gentleman from Massachusetts [Mr. DONNELLY] for his control.

Mr. DONNELLY. Mr. Chairman, I yield 30 seconds to the distinguished gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I chair the committee which has jurisdiction over the health care portion of what the gentleman from Massachusetts [Mr. DONNELLY] is trying to protect here. As chairman of that committee, I support the Donnelly amendment as a way to protect employees who are required under the amendment and under the law to pay 100 percent of their health care cost. This will allow them to keep their health care coverage.

Mr. Chairman, I urge Members who are interested in protecting employees of banks which have gone under and protecting their health coverage to support the amendment of the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. MORAN].

□ 1740

Mr. MORAN. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts [Mr. DONNELLY] to extend health insurance coverage to employees of failed bank and savings and loan institutions. There are a number of such institutions in my district and, I suspect, in many districts represented here.

Congress made a commitment to American workers and their families in passing the 1986 Consolidated Omnibus Budget Reconciliation Act by including a provision which grants employees the option to continue their health insurance upon resignation or job termination.

Our Nation is experiencing severe economic recession, long-term unemployment, and regional credit crunches that dim prospects of imminent recovery. The number of those without health insurance is already draining

the resources of our medical and social service facilities. It is reasonable for Congress to require successor banking institutions to administer the health plans of failing institutions and protect these employers who are discharged from their banking jobs through no fault of their own.

Mr. DONNELLY. Mr. Chairman, I yield myself such time as I may consume.

The en bloc procedure confuses things somewhat, and I just, in my final remarks, would like to clarify what the Donnelly amendment stands for. Forty thousand people since the beginning of this year have lost their jobs because of the economic situation of the banking industry. Were they to work in any other sector of the economy, those individuals, under the 1985 COBRA legislation, would be able to allow to themselves health insurance protection at full cost to themselves and at no cost to their employer.

The advantage of laid-off employees is that they can buy this health insurance at group insurance rates. So we are talking about 40,000 people here today that face no health insurance at all.

Finally, let me say, Mr. Chairman, it seems to me only fair that the mandates that we place on the public sector we also place on the private sector. It is inconceivable to me that the FDIC takes the position that they do not have to provide the same benefits to the laid-off employees that General Motors has to.

Mr. GONZALEZ. Mr. Chairman, I yield the remaining 1 minute to the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Chairman, I want to clear up some things that the gentleman from Wisconsin said and to make certain that he fully understands what this amendment does. We are talking about charitable organizations. When they are funded, they cannot break up their money. This only covers up to $100,000 as it stands now, which means if we have an organization that has a senior program that might be $200,000, Meals-on-Wheels could be $150,000, a counseling program be for another $30,000, early childhood programs for a couple $100,000, if the bank fails, the FDIC comes in and takes all the money over $100,000.

They cannot break up this. They have to have some protection.

So being they cannot do it any other way, I think that we have to give them some protection. This amendment gives them some protection. It is not enough.

The CHAIRMAN. The question is on the amendments en bloc, as modified, offered by the gentleman from Texas [Mr. GONZALEZ].

The amendments en bloc, as modified, were rejected.

Mr. DONNELLY. Mr. Chairman, I offer an amendment.

PARLIAMENTARY INQUIRIES

Mr. WYLIE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WYLIE. Mr. Chairman, I ask if the amendment is appropriate at this time, given the rule.

The CHAIRMAN. The rule entitles the gentleman from Massachusetts to offer his amendment.

Mr. WYLIE. Separately, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. WYLIE. After the chairman has already done it en bloc?

The CHAIRMAN. The gentleman from Massachusetts has a right to offer his amendment.

Mr. WYLIE. So he gets two cracks at it in effect?

Mr. DONNELLY. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, it was not the gentleman from Massachusetts' request that his amendment be included en bloc. Trust me.

Mr. WYLIE. Mr. Chairman, I do not have any quarrel with the gentleman from Massachusetts, but I thought we were following the rule as adopted by the Committee on Rules.

The CHAIRMAN. A similar ruling was made during consideration of the omnibus crime bill on October 17, 1991. The rule states very clearly that the gentleman from Texas has the right to offer an en bloc amendment. However, regardless of that en bloc consideration, then both the gentleman from New York and the gentleman from Massachusetts are entitled to offer their amendment in the printed order in House Report 102-281.

AMENDMENT OFFERED BY MR. TOWNS

Mr. TOWNS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. TOWNS: Page 460, after line 21, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

(5) INSURED DEPOSITS OF NONPROFIT ORGANIZATIONS.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by adding at the end the following new paragraph:

"(8) INSURED DEPOSITS OF NONPROFIT TAX-EXEMPT ORGANIZATIONS.—Notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any 1 depositor, each of the deposits of any depositor which—

"(A) is an organization referred to in section 501(c)(3) of the Internal Revenue Code of 1986; and

"(B) is exempt from tax under section 501(a) of such Code,

shall be an insured deposit.".

The CHAIRMAN. Under the rule, the gentleman from New York [Mr. TOWNS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

PARLIAMENTARY INQUIRY

Mr. WYLIE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WYLIE. Mr. Chairman, now that we are modifying what I thought was the rule that came from the Committee on Rules, is the amendment offered by the gentleman from New York the amendment as printed in the RECORD or the amendment which he modified and offered en bloc a little while ago?

The CHAIRMAN. The amendment offered by the gentleman from New York is the amendment printed in House Report 102-281.

Mr. WYLIE. So it is not the corrected amendment?

The CHAIRMAN. It is not as modified in the previous amendment; that is correct.

The Chair recognizes the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Chairman, I yield myself such time as I may consume.

What I would like to do is just indicate the fact that I think that the amendment makes a lot of sense and that I would hope that my colleagues look at the amendment and support it because, when you look at the agencies around that are being affected with just the $100,000 limit, I think that we need to do something. This will be the first step in doing that.

Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I opposed this amendment a little earlier in general debate and suggested that what the amendment says is "Insured deposits of nonprofit tax-exempt organizations, notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, each of the deposits of any depositor," and it says it shall be exempt from taxation and shall be insured up to $500,000.

Now, the way I read that amendment, that would include congressional campaign committees. I do not think that this is what the gentleman intended. He modified his amendment when it came to the House floor. So if there was any misunderstanding on that score, that would have been corrected and would have only applied to charitable organizations.

Mr. TOWNS. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from New York.

Mr. TOWNS. Mr. Chairman, that is what it applies to.

Mr. WYLIE. Reclaiming my time, that is not what the amendment says now.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, is this not the same amendment that was brought up in committee and that we defeated in committee?

Mr. WYLIE. It is not the same amendment, but we had a debate on a similar amendment.

Mrs. ROUKEMA. If the gentleman will continue to yield, it deals with establishing a new precedent in terms of a bank that may be considered by some as too good to fail as opposed to the part of the bill that we are foreclosing with too big to fail. But doesn't this amendment create another special category?

Mr. WYLIE. Mr. Chairman, that is correct.

Mrs. ROUKEMA. And it is a precedent that we have not up until now had. I do not think that this is the time to create new precedents and open up a whole new Pandora's box. If adopted, this amendment would create a new privileged and protected class of deposits. It would set a dangerous loophole through this precedent that could potentially incur untold millions, if not billions, of insured deposits placing taxpayers at greater risk.

Mr. WYLIE. Mr. Chairman, I thank the gentlewoman for her contribution.

Mr. BAKER. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Louisiana.

Mr. BAKER. Mr. Chairman, is my understanding correct that the definition of not profit is not charitable, nonprofit, so that any organization that is formed for the purpose of environmental activism, for campaign purposes at the Federal or State level, for any other community interest which might be out there, whether it be religious in nature or not, the group could have on deposit $1 million. And if the institution where they have the funds on deposit gets into trouble, then that particular deposit, that particular organization is treated differently from every other person who makes deposits in that institution, some working person who has $125,000 in the bank?

Mr. WYLIE. Mr. Chairman, that is correct. I would say to the gentleman, when he modified his amendment, he limited the insurance coverage to $500,000. I was just shown here, "shall be an insured deposit." So there is no limit on the amount of insurance.

Mr. BAKER. If the gentleman will continue to yield, so it could be several millions of dollars if it was a real active organization and had a lot of money in the bank, and it would be fully insured like no other taxpayer?

Mr. WYLIE. Mr. Chairman, that is correct.

Mr. TOWNS. Mr. Chairman, I ask unanimous consent to reclaim my time.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. TOWNS. Mr. Chairman, I yield myself such time as I may consume.

Let me just say that there seems to be some real misunderstanding here. We are talking about a 501(c)(3). We are talking about taking money from ourselves in many instances. We are talking about programs that are funded by the Government. We are talking about programs that provide housing, senior citizens programs, and then all of a sudden that because a bank folds and all these programs are lumped together, whenever they have above $100,000, the Federal Government takes it. These are the programs we funded already.

□ 1750

So it seems to me that we should put some kind of safety net on these particular organizations. So I think what we are doing would just make sense.

To talk about the fact that it is going to cost more money, I think if we do not do it, it would cost money, because if we take away what we already have given, it does not make any sense. So I think we need to take a very serious look at it, and I think that we need to help the small banks, because if they are too big to fail, that is one thing. But we are talking about a small bank that services a community, and I think we need to take a very serious look at that. And I think that this body needs to address that issue. The way to do it is to support this amendment.

Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I think I can present in graphic detail what my colleague, the gentleman from New York [Mr. TOWNS], is asking for.

As most Members know, I also am a pastor of a church, and that church has a number of community programs under 501(c)(3) which are nonprofit. They include a home care agency, they include a clinic, they include a school, and they also include a nonprofit home development corporation that just built affordable housing.

We cannot break those moneys up into small individual $100,000 accounts. The definitions given by the particular funding agencies require that that money is kept in a bank, and in most instances it is more than $100,000. So in the case of Freedom, when they closed it meant that organizations like mine had suffered the loss of Government funds.

The Government has to either reinstitute those funds or if the funds are lost it means some senior citizens will not be able to eat. It means we will not be able to build housing or educate people. We need to understand what the program does and support it.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me. The issue before us is not whether we wish to help a nonprofit charitable organization engage in civic and community work. The drafting of the amendment first applies to any 501(c)(3) organization, which is not charitable in nature, it is simply nonprofit. A campaign fund is a nonprofit organization which may qualify under the terms of the amendment as drafted.

Further, the amendment previously considered in the House had a $500,000 cap on the deposit. The amendment before us now has no such cap, so it is unlimited insurance for a nonprofit organization which may not be charitable in nature, and we are setting up a special insurance pool where no other taxpayer enjoys that type of coverage. We simply have to recognize, if we are not going to limit the multiple account insurance question, we cannot be opening up with this legislation new liabilities for the Federal deposit insurance fund. It is already broke.

The CHAIRMAN. The gentleman from New York [Mr. TOWNS] has 2 minutes remaining, and the gentleman from Ohio [Mr. WYLIE] has 1 minute remaining.

Mr. TOWNS. Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. TOWNS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. TOWNS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 63, noes 350, answered "present" 2, not voting 18, as follows:

[Roll No. 373]

AYES—63

Abercrombie	Flake	Murphy
Ackerman	Gejdenson	Nagle
Andrews (NJ)	Gonzalez	Oakar
Annunzio	Hall (OH)	Owens (NY)
Berman	Hayes (IL)	Payne (NJ)
Bilbray	Hertel	Pelosi
Bonior	Jefferson	Perkins
Boxer	Jones (GA)	Rahall
Brown	Jontz	Rangel
Clay	Kaptur	Roybal
Collins (IL)	Kennedy	Savage
Collins (MI)	Levine (CA)	Scheuer
Conyers	Lewis (GA)	Serrano
Coyne	Lowey (NY)	Stark
Dellums	Manton	Stokes
Dymally	McDermott	Torres
Engel	Mfume	Towns
Espy	Mineta	
Evans	Moody	
Fazio	Moran	

Traficant
Washington
Waters
Waxman
Weiss
Wheat

NOES—350

Alexander
Allard
Anderson
Andrews (ME)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilirakis
Bliley
Boehlert
Boehner
Borski
Boucher
Brewster
Broomfield
Browder
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Ewing
Fascell
Fawell
Feighan
Fields
Fish
Ford (MI)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (NC)
Kanjorski
Kasich
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Luken
Machtley
Markey
Marlenee
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McDade
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Miller (CA)
Miller (OH)
Miller (WA)
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison
Murtha
Myers
Natcher
Neal (MA)
Neal (NC)
Nichols
Nowak
Nussle
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Ramstad
Ravenel
Ray
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Russo
Sabo
Sanders
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Studds
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torricelli
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—18

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McCurdy
McEwen
Michel
Mrazek
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

□ 1812

Mr. MARTIN changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 22 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. DONNELLY

Mr. DONNELLY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. DONNELLY: Page 522, after line 9, add the following new subtitle:

Subtitle K—Bank and Thrift Employee Provisions

SEC. 696. CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Any successor of a failed depository institution shall—

(1) have the same obligation to provide a group health plan meeting the requirements of section 4980B(f) of the Internal Revenue Code of 1986 and section 602 of the Employee Retirement Income Security Act of 1974 (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

(2) be treated as the employer with respect to such former employees for purposes of applying section 4980B of such Code and part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974.

(b) DEFINITIONS.—For purposes of this section—

(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

(A) such entity holds substantially all of the assets or liabilities of such institution, and

(B) such entity is—

(i) the Federal Deposit Insurance Corporation,

(ii) any bridge bank (as defined in section 11(i) of the Federal Deposit Insurance Act), or

(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

(2) FAILED DEPOSITORY INSTITUTION.—The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver has been appointed.

(c) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 4980B of the Internal Revenue Code of 1986 occurred before, on, or after such date.

The CHAIRMAN. The gentleman from Massachusetts [Mr. DONNELLY] will be recognized for 5 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair now recognizes the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Chairman, I beg the indulgence of the House. The hour is late.

The last en bloc procedure we went through I think was very confusing.

My amendment very simply deals with the issue of continued health insurance for the unemployed. In 1985, this House passed and the President signed legislation that allowed laid off employees to continue having health insurance coverage, to continue participating in the health insurance program of their company, at no cost to the company because the individual who was laid off would pay the full price up to 18 months.

All my amendment does is codify the existing law to make sure that the FDIC and/or its bridge banks meet those same requirements that we place on all other corporations and industries in the private sector.

It would seem to me, Mr. Chairman, at a time when this institution and this Government is under such scrutiny of exempting ourselves from requirements that we place on all Americans, the one place we should not is with the FDIC. They ought to obey the same parts of the Federal law that all other private sector corporations have to adhere to.

Mr. MCGRATH. Mr. Chairman, will the gentleman yield?

Mr. DONNELLY. I yield to the gentleman from New York.

Mr. MCGRATH. If I understand this amendment correctly, Mr. Chairman, those who would be laid off as a result of a bank closure would have to pay 102 percent of the premium in order to cover the entire cost of the premium, plus the carrying cost for an 18-month period, am I correct?

Mr. DONNELLY. The gentleman is correct.

Mr. MCGRATH. Mr. Chairman, if the gentleman will yield further, I see

nothing wrong with that. That is what happens when businesses go out of business today, am I correct?

Mr. DONNELLY. The gentleman is absolutely correct. This amendment has no cost to the taxpayer. It places no additional burden on any of the bridge banks.

Just in this year alone, 40,000 individuals, and I might say mostly mid-management and lower paid employees of financial institutions have lost their jobs, and these people are without health insurance and here we are, an institution that spends time and money trying to develop plans to provide health care for the uninsured, I think this is a good way to make a quick start.

Mr. Chairman, I yield 1 minute to the distinguished gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, every Member of this House is talked to by their constituents who ask that we concern ourselves with health care costs and health care coverage.

The gentleman from Massachusetts is addressing that with regard to employees of failed banks. His amendment says that when a bank fails and the FDIC takes it over, the FDIC can offer the following to the employees of that failed bank: They can say to them, "Mr. or Ms. Employee, if you will pay your share of the health insurance cost, if you will pay your employer's share of the health insurance cost and if you will pay 2 percent administrative cost, that is 102 percent of the cost of keeping insurance, then you will be allowed to do so."

Now, that is only fair. I chair the committee that oversees and has jurisdiction under ERISA, that is the law which govern this, and as chairman of that committee of the gentleman from Massachusetts.

Mr. DONNELLY. Mr. Chairman, I reserve the balance of my time.

Mr. WYLIE. Mr. Chairman, I expressed myself in opposition to this amendment a little earlier. This is now the original amendment which was printed in the committee report which accompanied the rule with reference to H.R. 6.

The CBO said it would have some budget impact. I know the gentleman from Massachusetts [Mr. DONNELLY] redrafted that and the amendment which we offered en bloc a little earlier took care of that; but under present law businesses which close because of bankruptcy do not enjoy health benefits under COBRA.

I think the failure of a bank is similar to this and, therefore, I go on record in opposition to the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. DONNELLY. Mr. Chairman, I yield myself 10 seconds.

The staff of the Banking Committee informs me that the CBO has never put anything in writing how my amendment as originally printed in the text would have any financial cost to the Federal Government.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts [Mr. DONNELLY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 24 printed in House Report 102–281.

AMENDMENT OFFERED BY MR. MORAN

Mr. MORAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: Page 522, after line 9, add the following new subtitle (and conform the table of contents accordingly):

Subtitle K—Sense of the House of Representatives on the Credit Crisis

SEC. 696. CREDIT CRUNCH.

(a) FINDINGS.—The Congress finds that—

(1) during the past year and a half a credit crunch of crisis proportions has taken hold of the economy and grown increasingly severe, particularly for real estate;

(2) to date the credit crisis has shown no sign of improvement with its effects being felt broadly throughout the Nation as business failures soar, financial institutions weaken, real estate values decline, and State and local property tax bases further erode;

(3) approximately $200,000,000,000 of the nearly $400,000,000,000 in commercial real estate loans now held by commercial banks are coming due within the next 2 years;

(4) banks for a variety of reasons, are reluctant to renew these maturing real estate loans;

(5) both pension funds in the United States, with assets of nearly $2,000,000,000,000, and a stronger and more active secondary market for commercial real estate debt and equity could play a more significant role in providing liquidity and credit to the real estate and banking sectors of the economy;

(6) many regulatory practices encourage banks to reduce their real estate lending without regard to long-term historical risk; and

(7) the stability of real estate has suffered during the past decade first from tax rules that in 1981 stimulated excessive investment in real estate, and then in 1986 when rules were adopted that discourage capital investment in real estate, artificially eroding real estate values.

(b) SENSE OF THE HOUSE OF REPRESENTATIVES.—It is the sense of the House of Representatives that—

(1) immediate and carefully-coordinated action should be taken by the Congress and the President to arrest the credit crisis referred to in subsection (a) and provide a healthy and efficient marketplace that works for owners, lenders, and investors; and

(2) that efforts should be undertaken to explore measures that—

(A) modernize and simplify the rules that apply to pension investment in real estate to remove unnecessary barriers to pension funds seeking to invest in real estate;

(B) strengthen the secondary market for commercial real estate debt and equity by removing arbitrary obstacles to private forms of credit enhancement;

(C) restore balance to the regulatory environment by considering the impact of risk-based capital standards on commercial, multifamily and single-family real estate; ending mark-to-market, liquidation-based, appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field; and

(D) rationalize the tax system for real estate owners and operators by modifying the passive loss rules and encouraging loan restructures.

The CHAIRMAN. Under the rule, the gentleman from Virginia [Mr. MORAN] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. SHAW. Mr. Chairman, if there is no Member in the Chamber opposed to the amendment, I ask unanimous consent to claim that time.

The CHAIRMAN. Is the gentleman opposed to the amendment?

Mr. SHAW. Mr. Chairman, I am not opposed to the amendment.

The CHAIRMAN. Without objection, the gentleman from Florida [Mr. SHAW] will be recognized for 5 minutes.

There was no objection.

□ 1820

Mr. MORAN. Mr. Chairman, I do expect that this amendment is nonpartisan, noncontroversial, strongly supported by both the Democratic and Republican Parties, and in fact by the executive branch and the legislative branch.

Notwithstanding the consensus it reflects, it is nevertheless a very appropriate and important addition to this banking reform bill. It calls for a comprehensive coordinated approach to deal with the credit crunch that is reaching crisis proportions throughout our country.

The American economy is much like a heavyweight champ today that is on the ropes and about to go down for the count. Lower interest rates alone are not going to revive it. It has taken too many body blows, insufficient investment in its physical infrastructure, a decade of high living, a checkbook that is $350 billion out of balance.

And now it is getting hit by foreign competition, by lack of consumer confidence, and a sick and failing banking system. At this time, to make matters tougher, it is having its arms held behind its back by a nationwide credit crunch that is making the money necessary to revive this economy too difficult to be obtained.

This amendment suggests both general and specific ways in which we can unleash the inherent strength of this economy to let it rebound, but it cannot come back unless small businesses, farmers, builders, and entrepreneurs can get credit from banks for reasonable and responsible projects.

In the real estate industry alone, 200,000 jobs have already been lost by building tradesmen, engineers, realtors, and to make it a lot worse before

it gets any better, $200 billion of short-term commercial bank loans to the real estate industry for multi- and single-family residential projects and for office buildings construction will come due over the next 2 years.

According to a recent Federal Reserve Board survey, 93 percent of these loans are not getting the long-term extensions that they need. Yet only 6 percent of these commerical loans are nonperforming.

The rest are completely paid up to date. But the banking system is gripped by a fear of the future and intimidation of regulations. Some of that is justified, but much is unjustified.

The consequences of this mind-set against real estate loans is that real estate values are dropping through the floor, which means that local property tax assessments will deprive our local governments of the millions of dollars necessary for essential municipal services that only come from property taxes. Hundreds of businesses whose operating loans are collateralized by their real estate property are having those loans foreclosed.

Mr. Chairman, the billions of dollars of federally owned real estate with the Resolution Trust Corporation is losing millions of dollars of book value every day because of this loss in real estate values. This amendment calls for several things that would make a difference.

Immediate and carefully coordinated action by the Congress and the President to arrest the credit crisis, modernization and simplification of the rules that apply to pension investments and real estate because that is a $2 trillion industry that is the normal source of long-term financing; a strengthening of the secondary market for commercial real estate debt and equity by removing arbitrary obstacles, restoring balance to the regulatory environment by considering the impact of risk-based capital standards on commercial and multi-family and single-family real estate, ending the march-to-market liquidation appraisal-based appraisal and encouraging loan renewal, and fully communicating the supervisory policy that we established with bank examiners in the field; and lastly, rationalizing the tax system for real estate owners and operators by modifying the passive-loss rules and encouraging loan restructures.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. SHAW].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding and rise in favor of this resolution and the action it encourages.

Mr. Chairman, on October 17, 1991, I held a meeting on the credit crunch with regulators from the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Bank, and the Office of Thrift Supervision as well as leading builders, developers, business people, and bankers in the Washington, DC area. Congressman MFUME, a member of the Banking Committee, also participated in the meeting and listened to an avalanche of unhappy comments and personal experiences. Many of these men and women, who are involved in commercial and residential building, had voiced concern in the past year about the unavailability of capital for a variety of projects. One of the builders who attended the meeting later wrote,

> There is absolutely no credit available for residential construction!! We have not seen any new loans for the past two years and are being told by our banks not to expect any new money for the next two to three years * * * local builders who have played a major role in developing this region are all on the brink of bankruptcy. This is real and not a perceived point of view.

Several builders expressed the sentiments written by one local builder:

> Builders are finding it difficult to finance the construction of new homes, even where they have signed contracts from purchasers. This is particularly true for smaller builders, many of whom have been forced to cease operations.

Others have said that the availability of mortgage or construction financing for feasible and viable rental property and commercial projects is totally nonexistent.

Suburban Washington, DC is not the only region to experience this credit crunch; developers across the Nation are increasingly anxious about the scarcity of credit, even as the economy may be showing some weak but positive signs of emerging from recession.

Mr. Chairman, it is, therefore, with some urgency that I support the sense of the Congress resolution urging Congress and the administration to seek immediate remedies for the current crisis. It is time for action; enough has been written. Bank regulators have been told to use common sense in dealing with responsible lenders. Again, one of the builders mentioned,

> The regulators consistently stated that there is no problem with the availability of funds and that they are merely taking appropriate steps to deal with bad loans and uncreditworthy developers * * * the first step in solving a problem is the recognition of its existence.

There is a need to recognize that a credit crunch does exist and that Congress and the President must take immediate positive and constructive action. I see this resolution as only a symbolic first step in the right direction, but we cannot stop at a resolution. We must encourage the OCC and other bank regulators to implement a uniform, but fair standard of appraisals, permit and encourage loan refinancing, and immediately ensure that bank examiners in the field know and follow revised but more flexible underwriting guidelines for loans and appraisals.

There is abundant, clear, and convincing evidence that the regulatory pendulum has swung too far and is now contributing to economic stagnation and slow growth. Congress should not, and in my view, did not intend that virtually all financing for any residential or commercial development, especially where it is needed and is feasible, be brought to a complete standstill. I am undertaking an in-depth factfinding mission for the purpose of identifying the specific barriers and causes of our credit crunch and to provide findings and recommendations for solutions. I invite all of my colleagues in the House to participate with me.

Mr. Chairman, I urge our priority attention to this credit crisis. One of the builders at my October 17 meeting stated sadly that, if some positive action is not taken, there will be no participants in a similar meeting a year from now. With many of us now looking at costly and impractical stimulus and growth initiatives, getting credit for housing seems to me to be a better solution. I strongly support this resolution and the actions that it encourages.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS of Texas. Mr. Chairman, I thank the gentleman for yielding and rise in support of the amendment.

Mr. Chairman, I rise in support of the amendment offered by my colleague JIM MORAN. There is no question that a credit crunch of crisis proportions has taken hold of the economy and is harming many industries, especially real estate.

The real estate industry, historically a great source of economic growth and jobs, is facing the worst crisis since the Great Depression. This crisis is exacerbated by the inequitable treatment real estate entrepreneurs receive under the passive loss rules. I introduced my passive loss bill, H.R. 1414, to remedy this inequity. We do not have a tax vehicle for H.R. 1414 this year, but when we do mark up a tax bill next year, I am confident that H.R. 1414 will be considered as part of the bill.

I hope that the administration can join with the House leadership to move an economic recovery package next year that will stimulate the economy, solve the credit crunch, and fix the passive loss rules.

Mr. SHAW. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there is much to say about this particular amendment, but the time is late. I think the gentleman from Virginia [Mr. MORAN] stated it very eloquently.

I would like to add only one thing to his remarks, in addition to complimenting him for bringing this resolution before the committee. That is that the common denominator, the common currency of loans in this country traditionally has been real estate. In 1986, we passed a tax bill, much of which was needed but some of which was very damaging to the value of real estate.

With the plummeting value of real estate, it is necessary we go back and review what has been done and look at what is the main cause of the recessionary cycle that we are going through now and the banking crisis in which we find ourselves.

I think undoubtedly we have to say it is the value of real estate.

I think every Member in this Chamber tonight would agree real estate is at the very bottom of the problem,

even though there may be some other problems.

Mr. Chairman, I urge adoption of this amendment.

Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. I thank the gentleman for yielding, and I rise in strong support of the resolution of the gentleman from Virginia.

I would say that we need, however, and I think all of us agree, what we need is very quick action following the adoption of this resolution. We obviously, in the Washington metropolitan area, are suffering very badly. We are not alone, we understand that. But if we do not move quickly, this recession clearly for us in the Washington area in the building industry is a depression.

We have 60 percent of the Southern Maryland Building Industry Association on the ropes, most out of business. We need to move, we need to move quickly and decisively.

Mr. Chairman, I join the remarks of the gentleman from Florida [Mr. SHAW] and the gentleman from Virginia [Mr. MORAN].

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. I thank the gentleman from Florida. I am in complete accord with the comments of the gentleman from Florida with regard to tax policy that needs to be reviewed.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MCMILLEN].

Mr. MCMILLEN. I thank the gentleman for yielding and join the gentleman for his call to arms.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, I thank the gentleman for yielding time to me, and I would like to express my support for the amendment and resolution offered by the gentleman from Virginia.

Mr. Chairman, the Nation is crying out for leadership from Washington to pull us out of the credit crunch that has helped to dry up new housing and major construction starts and which has resulted in thousands of job losses in the real estate industry and throughout the economy.

Businesses of all kinds—from car dealerships to defense contractors—are succumbing to the credit drought brought on by free-falling real estate prices. Real estate holdings that businesses had been counting on using to secure credit are simply no longer acceptable to banks as colateral.

Without credit, businesses cannot expand and many can be expected to fail. Through no fault of their own, more and more Americans will find themselves out of work unless we find a way to restore and strengthen our economy's sources of credit and capital.

This debate on banking reform legislation is the logical place to signal a redoubling of our efforts in this regard. The amendment offered by the gentleman from Virginia [Mr. MORAN] offers us the opportunity to send a clear message that Congress and the White House are prepared to work together on ending the credit crunch.

I urge all my colleagues to support the Moran amendment.

Mr. SHAW. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The amendment was agreed to.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

Mr. OWENS of Utah. I rise today to express my opposition to final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act.

Mr. Chairman, the goals of this legislation should be twofold. First and foremost, we must limit taxpayers' exposure to bank failures. This can only be done through substantive regulatory and deposit insurance reform. We should end the folly which is incorporated in the too-big-to-fail policy. Second, we must ensure that bankers and other holders of federally insured deposits no longer have incentive to engage in the risky lending activities that continue to plague the industry to this day.

Unfortunately, the final product of this heated debate does neither. I was one of just over 100 Members who supported the so-called core bank amendment, simply because it is the one alternative that might accomplish these twin goals. I reluctantly oppose the amendment to strike title IV of this bill, simply because title IV provided banks some means of involvement in securities activities while implementing mechanisms to protect federally insured deposits from high-risk activities. While title IV was far from perfect, I felt that the Congress must assert its legitimate role in the regulatory process, and retaining title IV, at that juncture, appeared the only legitimate means of asserting that authority.

Mr. Speaker, though I opposed that amendment, I was disturbed by the resoundingly antibank rhetoric surrounding that vote. And upon further thought, I intend to vote against final passage of the bill in the hope that the committees of jurisdiction will make the limited but real substantive reforms necessary to earn our support in the future.

The banking industry is undergoing significant changes—upheavals, even, that are inevitable in today's sluggish economy. Some failures will be the inevitable result of the capitalist system. Weaker and poorly managed banks should be allowed to fall, and title I, II, and V of this bill take much-needed steps in the right direction.

I firmly believe that banks should be allowed to branch out into nonbanking activities, albeit with appropriate firewalls and restrictions. Though federally insured deposits should not be exposed to the risky activities to which they were exposed in the 1980's, enhanced competition in the securities and insurance industries should be a welcome consequence of any substantive reform legislation. Nor am I convinced that this legislation, in its current form, provides adequate freedom for legitimate financial services companies to engage in legitimate banking activities.

This legislation fails to strike that balance of fostering competition in those industries while adequately protecting taxpayers from exposure to bank failures. The President has indicated that he will veto this legislation. A veto override of this legislation, in its current form, is unlikely. But real reform of the banking industry—at a minimum, BIF recapitalization and even minimal regulatory reform—is needed now. Both sides of this issue have heightened the intensity of the debate while lowering its quality.

The best alternative before us today is to send this bill back to the committee. If we send it back today, a clean bill with BIF recapitalization and limited but important changes is certain to be returned to us. I suspect that the issues of expanded bank powers and comprehensive deposit insurance reform will be among the primary issues of debate throughout the rest of the year and throughout the next session. I encourage my colleagues—especially those who supported retaining title IV last week, to join me in opposing final passage of this bill as a movement toward simple, but vitally needed reform and recapitalization.

Mr. DORNAN of California. Mr. Chairman, I rise today to express my extreme disappointment with H.R. 6, the Deposit Insurance and Regulatory Reform Act in its current form. Title IV of the bill is particularly regressive. I voted to strike title IV last week, and I urge all of my colleagues who also did so to likewise vote against passage of H.R. 6.

It is a shame, Mr. Chairman, that the Dingell-Gonzalez compromise was adopted as original text. It contradicts the procompetitive goals for which the House Banking Committee worked so hard. There are many amendments to this bill, including some to title IV, which I would normally have supported. Unfortunately, none of them would fix the fundamental flaw in the Dingell-Gonzalez language, the so-called blackout provisions preventing banks from lending to customers who also use the services of the bank's securities affiliate. This provision went against the better judgment of the Banking Committee. It rolls back current powers that some banks have to sell insurance and provide investment banking services, as well as limiting them in the future. Lost jobs and lost revenues will be the result, and neither will get our economy back on its feet.

The reason is simple: the blackout provision is anticompetitive, hurting both banks and their customers. It forces customers to choose between the services of the bank, and the services of the bank's securities affiliate. They cannot choose both. This excessive firewall creates duplicate regulation and makes it virtually impossible for a securities subsidiary of a financial services holding company to operate profitably. This is, to say the least, a bad way of regaining consumer confidence in our Nation's financial system and the marketplace.

It is, however, an efficient way of curtailing business. Constraining a bank's ability to make loans to customers who happen to be customers of the bank's securities affiliate will devastate both the corporate debt and mortgage-backed securities business of many banks. This is restrictive and unnecessary.

But it doesn't end there. Title IV also takes away existing options for banking organizations to engage in insurance activities and is therefore contrary to the procompetitive thrust of H.R. 6 as reported by the Banking Committee. It would eliminate: the ability of U.S. banks to conduct title insurance activities; many of the general insurance activities now conducted by small town banks; the authority of state banks to underwrite most of the insurance products currently authorized by their banking departments; and the ability of State banks to market new insurance products—including credit card insurance—on an interstate basis, except under very limited conditions.

Mr. Chairman, title IV as passed ruins what had been shaping up to be a good banking bill. It leaves in ashes—through a substitution in the final hour, mind you—well over a year's worth of hard work by the Banking Committee to fix the underlying weaknesses of our banking system. Never mind the furtive manner in which the Dingell-Gonzalez language was included in the bill which exemplifies everything the American public distrusts with this institution. Every other provision on deposit insurance, regulatory improvement, and nationwide banking and branching becomes moot in the face of title IV and its anticompetitive view of the role of our banks in our nation's economy.

I urge my colleagues not to simply pass another bill the President won't sign. I think the vote on striking title IV illustrates this body's own hesitancy to proceed with this flawed bill. Let's vote this bill down and send it back to the Banking Committee to remove the Dingell-Gonzalez language. I think we can all agree that this is no time for half measures. This bill is not finished. Let's not pass it until it is. Vote no on H.R. 6.

Mr. COX of Illinois. Mr. Chairman, I am greatly disappointed with the shape that H.R. 6, the Financial Institutions Safety and Consumer Choice Act of 1991, has taken as we move toward final passage of the bill. From the hearings and debate we have had on banking reform over the past 18 months, we have recognized the declining health of the banking industry. While many of our Nation's banks are still solvent and profitable, over a quarter are currently posting losses. We have learned from the mistakes of the 1980's and the thrift industry, and must now act in the most responsible manner we can to restore health to the industry.

There is no doubt that this legislation has some very valuable components. The bill contains a provision that will attempt to eliminate the too-big-to-fail policy, it requires regulators' early intervention in faltering institutions, and it maintains current levels of deposit insurance. In addition, Congress has shied away from a full repeal of Glass-Steagall in this legislation, preventing the combination of banking and commerce and excessively high concentrations of capital.

All this being said, we must assess what this legislation contains that we can call true bank reform. H.R. 6 was initially designed to give banks new powers and services. By allowing banks to get into insurance and securities activities, we were responsibly permitting banks to diversify and increase their capital levels. Despite this simple concept, the bill has strayed so far away from this goal. The restrictions that the bill contains today between banks and new powers are not only prohibitive, but regressive. In an effort to create firewalls, we have eliminated any incentive for banks to venture into more profitable markets.

I believe that the final product of H.R. 6 not only fails to fulfill our mission to restore health to the banking industry, but will ultimately cause more banks to fail. Over the course of activity on this bill, I have tried to maintain a balanced perspective between large and small banks and to assess what we can do to protect the taxpayer from a potentially insolvent industry. With these views in mind, I do not believe I can vote for H.R. 6 in good conscience. We are simply not doing anything to truly reform the banking industry.

The State of Illinois spent several years working to create a system that embraces a healthy balance between large and midsized banks and community banks, recognizing the State's geographic diversity. In the midst of the recession, Illinois' system has proven its effectiveness and withstood the weakening of the Nation's banking industry. I believe the Federal Government can learn from the process followed by Illinois, and understand the virtues of moving at a gradual pace.

H.R. 6 has seemed to move from one extreme to the other. Initially, I feared the bill could cause too much harm to community banks, and now I fear that larger banks cannot benefit from the bill in any way. As a result of withholding true reform from the industry, it is the taxpayer who stands to suffer the most. Until we take real steps to make the banking industry safe and sound again, the consumer gains nothing from this bill.

I regret that at the end of a several month process, Members of Congress have failed to work out their differences in this bill. Rather than creating a well-balanced compromise, we have created comprehensive legislation in which nobody wins. I am hopeful that we will learn from this lesson, and have the opportunity to revisit these issues in the near future. And especially, I am hopeful that we can create a product that will bring true safety and soundness to the banking industry.

Mr. McMILLEN of Maryland. Mr. Chairman, we are considering the most important piece of financial legislation in 50 years. Nonetheless, I rise in opposition to this bill. It continues a policy of "heads banks win, tails taxpayers lose".

I supported the bill in the Energy and Commerce Committee and Subcommittee, but aired my reservations about certain provisions not under our jurisdiction. My opposition is not a reflection of the strenuous work which the committees have done, rather, it is rooted in my concern that the real problems which underlie the system have not been adequately addressed in this bill. I would prefer a narrow bill which recapitalizes the bank insurance fund [BIF], allows interstate banking, and includes the regulatory and FDIC changes which have been agreed upon. We should reconsider expanded bank powers issues only in conjunction with a serious reform of the deposit insurance system.

This legislation authorizes a $70 billion loan for the Federal Deposit Insurance Corporation [FDIC]. Technically, the banking industry is supposed to pay back the money so that the U.S. taxpayer is not forced to pick up the tab. This, unfortunately, is not likely. Private economists estimate that the banking industry will need a $200 billion investment to restore adequate capital levels, bail out failed banks and restore the industry's health.

If the point of the legislation is to make banks more competitive, it does not achieve this. If the point of the legislation is to limit taxpayer exposure and to avoid future bailouts, it does not achieve this. What the bill will do, is provide more money for the bank insurance fund, without creating market incentives and without fundamentally reforming the banking system.

In the public's mind, financial institutions are indistinguishable, be they sound or insolvent. Well managed banks pay the same insurance rates as the poorly run banks, and they have the same coverage. Hence, it is in a depositor's interest to find the highest rate of return, regardless of risk. There exists no incentives for either depositors or managers to exercise restraint. This principle was demonstrated in the S&L debacle, where the incentives actually ran the other way. Millions of dollars in brokered deposits sought the highest rates, regardless of the soundness of the institution. The only risk was and is to the U.S. taxpayer.

As Franklin Roosevelt predicted years ago, deposit insurance would encourage bad business practices, and encourage reckless lending. Ultimately, we would be insuring incompetence, and setting ourselves up for massive bailouts.

The FDIC was never intended to protect the $900 billion of uninsured deposits, yet the regulatory agencies now use FDIC premiums to pay off uninsured deposits, both foreign and domestic.

While the efforts to limit deposit insurance in the bill are appealing in principle—such as the proposal to limit coverage of multiple accounts—I am concerned that this will cause disintermediation for small banks, which, ironically, have been the sounder elements of the system. And although the bill eliminates the essentiality clause—too-big-to-fail—there will continue to be instances for macroeconomic purposes where the FDIC will bail out deposits over and above the $100,000 limit, despite the changes made by H.R. 6.

At issue here is the fact that the reform proposals don't alter the pricing of deposit insurance, which is artificial and does not reflect the actual value. An SEC study which came out earlier this year showed that the cost of deposit insurance systemwide was underpriced by $20 billion annually in each of the last 10 years. This amount is ultimately picked up by the system and the taxpayer. As Warren Buffet said:

> The government's insurance program needs to be overhauled to incorporate the first law of insurance underwriting: Rates must be based on risk.

While I applaud the efforts to implement a risk-based premium system over the next 3

years, I am concerned that the premiums will be a sliding scale based more upon what the FDIC thinks the banks can pay, rather than the price of the risk to the system. Furthermore, the underlying premise upon which these provisions are based—capital standards—are lagging indicators and do not accurately reflect liability.

The best way to minimize taxpayer exposure is to provide a sound deposit insurance system, one which infuses market discipline and minimizes the public subsidy inherent in deposit insurance. I offered an amendment to the Rules Committee which would institute a reinsurance system for deposits above $100,000. The specific proposal is not as important as the need to create a system where capital is attracted to safer banks, and risky lending practices discouraged by market pressures. The Senate bill contains provisions to establish a 30-year reinsurance pilot program, and the House bill creates a study to review the issue. Although these are steps in the right direction, they are too little and too late.

If such a market-oriented deposit insurance system existed, the debate over specific firewalls or other such provisions—which has been so contentious in the banking reform debate—becomes much less important to the underlying safety of the system. The concerns of many of my colleagues center on the fact that the public subsidy of deposit insurance will spill over into securities affiliates, insurance affiliates, and so forth, even with stringent firewalls.

SCHUMER-MC MILLEN

With the aforementioned comments in mind, there are a number of issues which I support in this legislation. Title IV of the bill contains one of the most significant consumer safeguards in the bill—the prohibition against the sale of bank securities in the lobby of such banks. Specifically, I am making reference to section 15D(d) of the committee print.

These provisions are based in large part on legislation which I introduced with Representative SCHUMER earlier this year, H.R. 1023, the Depositor Protection and Fraud Act of 1991. The origins of the legislation go back to a House Banking Committee hearing held 2 years ago, when I served on that committee. The hearing focused on the sale of lobby debt, and how many investors purchased high yield bonds under the false assumption that they were federally insured. The example was, of course, Lincoln Savings & Loan.

The provisions in H.R. 6 guard against a repetition of this tragedy by prohibiting the sale in a retail branch of a federally insured bank or S&L of certain specified types of debt or stock of the bank or any affiliate of the bank. This restriction does not apply to shares of certain mutual funds.

OPEN BANK ASSISTANCE

I would also like to commend the Banking Committee for its wisdom in continuing a policy which allows the FDIC to provide financial assistance to weak banks that are in danger of failing, the "open-bank assistance" provisions. The FDIC is allowed this authority only in the instance where it is necessary to keep the bank afloat while it repairs its capital, and if doing so would cost less than closing the bank, and the management was determined to be competent and had not violated any laws or regulations or otherwise took actions jeopardizing the institution. This is in keeping with Franklin D. Roosevelt's program of the Government acquiring preferred stock in well managed banks, in an effort to ensure the banks' survival until better economic times.

The bottom line is that we need to find the least cost way of resolving undercapitalized banks. The policy behind the open bank assistance provisions makes sense—it is in the best interest of the banks, and in the best interest of the taxpayer.

INTERSTATE BANKING

Regarding the interstate banking provisions, title III of the bill contains a much-needed relaxation of Federal laws preventing banks from operating across State lines. I support interstate banking, but do agree that State's rights should not be usurped by a Federal law in this area. It is simply prudent to respect such rights, and allow a State to "opt out" of the system. This kind of deference is necessary in a union of States as diverse as in this country. The Vento amendment establishing a 3-year period for States to opt out of the interstate branching system is a healthy balance in this area.

CORE BANK

While the core bank proposal is very appealing, and in keeping with my emphasis on limiting deposit insurance coverage, I opposed the core bank amendment on the floor. The reason for my opposition was based on the fact that this idea needs further review. Such a far reaching proposal raises numerous questions, ranging from the impact on capital shifts to the fallout on wholesale banks. However appealing or sound such a proposal may be, lingering questions demand thorough study. For this reason, I could not support the proposal this year, but hope the issue is reviewed in the future.

FDIC PRIVATE SECTOR AMENDMENT

In keeping with the least cost approach to resolving failed banks, I would note that within H.R. 6 is a provision amending the Federal Deposit Insurance Act to instruct the FDIC to utilize the services of private persons, such as real estate and loan portfolio asset management whenever practicable. This is similar to an amendment which I sponsored, and which was subsequently adopted, during the debate on the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA]. The FDIC has been operating under a different policy from the Resolution Trust Corporation [RTC] during this time, and the provisions in H.R. 6 simply resolve this discrepancy.

Admittedly, the record on the RTC's utilization of the private sector has been mixed. The RTC has been slow to implement a comprehensive system, but, as I understand it, the RTC has developed plans to contract out up to 80 percent of the 140 billion dollars' worth of assets which it currently holds to some 45,000 registered contractors. The point is that although the RTC has been slow to fully utilize the private sector, the RTC simply does not have the manpower nor the expertise to dispose of such an immense quantity of assets, and neither does the FDIC. If we are going to see a return on any of the funds which currently are being authorized for the BIF or the RTC, it will only be if we effectively and efficiently dispose of the assets which the Government is accumulating. Using the private sector for this function makes sense, both for the RTC and for the FDIC.

KENNEDY AMENDMENT

While I am very sympathetic with the intentions of the community benefit standards amendment offered by my colleague from Massachusetts, I opposed it for a number of reasons. To begin with, I feel strongly that if we really want to increase the competitiveness of banks, the last thing we need to do is add another layer of regulation to the industry. Furthermore, there are numerous provisions in the bill which bolster the Community Reinvestment Act, aside from the 10 major consumer laws enacted in the last few years.

The real problem behind this issue, however, is not whether we are for or against discrimination. Clearly no one is. Nor is the issue whether or not we have sufficient laws on the books. The problem is that the administration does not enforce the laws currently on the books, nor does it have the resolution to really battle the instances of discrimination. There is very little that Congress can do if the administration refuses to enforce the law. Unfortunately, passing new laws or adding another layer of bureaucracy to an already cumbersome regulatory apparatus is not the answer.

In summary, while there are many bright spots to this legislation, in the final analysis I have to oppose it. The bill adds more layers of bureaucracy on banks without adequately addressing key problems in the system. Without the kind of fundamental reforms that I have outlined, without instituting some kind of free market pressure to ensure accountability, without adopting a reinsurance based Federal deposit insurance system, the recapitalization of the BIF will simply become one more taxpayer bailout. In good conscience, I cannot support this.

Mr. FRANKS of Connecticut. Mr. Chairman, I rise in opposition to H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991. My opposition to this bill rests mainly with my concerns over title IV of the bill as amended.

This bill was introduced for three reasons: First, to recapitalize the bank insurance fund; second, modernize banking laws to increase competition in banking industry, and third, to modernize the banking regulatory structure.

Title IV was the section of the bill aimed at increasing competition in the banking industry. Title IV, as reported by the Banking Committee would have strengthened the role of capital by allowing banks to enter new activities and services based on solid capital levels. However, the House was not allowed to vote on this issue as the Energy and Commerce version of title IV was substituted. The Energy and Commerce version of title IV is a step back in banking and makes no attempt to modernize the bank industry. I believe that banks would lose competitive ground under the Energy and Commerce and would be better off under current law. For this reason, I voted for the amendment to strike title IV from the bill.

I support title III which will introduce interstate banking and branching throughout the country. I believe that this provision will allow banks to streamline their bureaucracy and

interstate banking will prevent regional depressions from destroying the banking communities in these areas.

In addition, I supported the amendment to limit deposit insurance for individuals to $100,000 per person per institution with an additional $100,000 per person per institution on individual retirement accounts. Current deposit insurance coverage is too broad. This modest scaling back of deposit insurance is the appropriate move to make at this time. Most Americans do not come close to having $100,000 in deposits. Fewer than 6 in 100 households have deposits totaling more than $100,000. I believe this is a prudent and much needed reform in the deposit insurance system. Unfortunately, this amendment did not pass.

While this bill does contain the recapitalization for the bank insurance fund [BIF], I cannot support a measure which was intended to modernize the banking industry and instead moves the industry even further behind. Mr. Chairman, it is my hope that this bill will not pass and that instead the Banking Committee will first report a bill to recapitalize the BIF and then reach a consensus on modernizing the bank industry and regulatory structure .

Mr. MOODY. Mr. Chairman, I stand in support of final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991.

I feel that this bill brings several essential improvements to the banking industry that will help steer the industry away from the tragic path that the S&L's followed.

Specifically, title II of this bill provides many provisions that will strengthen Federal supervision and examination of banks and thrifts. The bill outlines precise levels of capital below which Federal banking regulators will be required to intervene promptly and implement strict reform strategies and recapitalization procedures for these institutions. This will prevent the problem of keeping weak banks open in the vain hope that they will be able to grow their way out of their problem. This ends up costing U.S. taxpayers even more. Early intervention is the public's best safeguard, and this bill makes it a requirement.

This bill would also require the Federal Deposit Insurance Corporation to use the least costly method of resolving troubled institutions, and the bill contains several provisions which would increase Federal Reserve regulation of foreign banks operating in the United States.

I also am pleased that limited additional powers were given only to the banks with the highest level of capital, level 1. I do not feel that banks which have undergone risky and unsuccessful operations should be allowed to assume powers which may prove to be even more speculative than the loan processes that were abused.

Mr. Chairman, I also want to speak out in strong support of the strong firewalls and restrictions that this bill places on the banks that will be able to assume new powers. Even the well-capitalized institutions should be watched closely as they enter new territory, and this bill requires strict supervision by both the Federal Reserve and the Securities and Exchange Commission.

Finally, I point out that the Nation's largest banks want to defeat this bill because they think it is too tough. The White House agrees. But the consumers, small community bankers, and depositors in Wisconsin that I have spoken to over the past 5 days have told me to support this bill.

Wisconsin banks are well run and well capitalized. They are not the cause of this problem. We need a law that forces banks in other states to act as responsibly. This is that bill.

For these reasons, Mr. Speaker, I support final passage of H.R. 6.

Mrs. MEYERS of Kansas. Mr. Chairman, it is with great reluctance that I cast my vote in favor of final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act. Many of the amendments I supported in hopes of improving the product were defeated. However, I am holding my nose and voting "aye" in the fervent hope that a bill will emerge from the House-Senate Conference Committee that is a better piece of legislation than H.R. 6.

It is absolutely vital that Congress take action to recapitalize the bank insurance fund before the end of this year. As Members of this body should know from the S&L mess, the price of a wait-and-see policy was very high. Fully 50 to 60 percent of the cost the taxpayers have been paying to bail out the S&L's was due to Congress' inability to take timely action and minimize that problem. Defeating H.R. 6 at this point in the process may doom Congress to repeating the same mistake. The bank insurance fund is nearly broke. Should the money run out by the end of the year with no recapitalization plan in place, the FDIC cannot step in to liquidate insolvent institutions. Those persons managing the insolvent institutions will seek to make high risk, high yield loans to pull themselves out of their desperate situation. The end result will be much higher losses to the bank insurance fund when Congress finally gets around to the issue at hand and addresses recapitalization—without the added clutter of new bank powers, firewalls, and the like.

I do not categorically oppose new powers for banks. In fact, I believe some expansion of bank powers, with proper regulation, may be necessary to render the United States financial institutions more competitive in the global market. However, first things first! I believe we should recapitalize the insurance fund, and make sure our banks are healthy. Unfortunately, the vehicle the House has been presented for prompt action on recapitalizing the insurance fund is not confined to that purpose.

Mr. Chairman, it troubles me to have to cast a "yes" vote on a bill that I probably wouldn't support, under different circumstances. However, I will not play a part in perpetuating a situation among our Nation's banks that existed a few years ago among our S&L's. By voting for H.R. 6, I am voting to keep the legislative process moving to address an urgent problem. I firmly believe it is the only responsible thing to do.

Mr. MAVROULES. Mr. Chairman, most recently, October 25 to be exact, the Administrator of the Small Business Administration Pat Saiki stated:

> America's small businesses are poised to lead the country into an economic recovery if they can get enough support from the lending community.

Federal Reserve Board Chairman Alan Greenspan, stated this week that the economy is struggling to move forward and he blamed a nationwide credit crunch. Lower interest rates and Treasury regulatory reforms have not improved the credit conditions.

During the House debate on legislation today to recapitalize the Federal Deposit Insurance Fund and restructure banking activities, I find it appropriate to reiterate the need for banks to responsibly support the capital needs of small businesses.

I wish to advise my colleagues' that New England has been experiencing a serious credit crunch for the last 18 months.

The House Small Business Committee held hearings on the credit crunch in April, 1990 and again in March, 1991, at which time, in spite of statistics to indicate otherwise, regulators and the President did not feel a tight credit market existed. In April of this year many of the President's economic advisors predicted that the recession would soon be over and we would enter a period of economic growth.

This, of course has not happened.

The New England economy has suffered considerable setbacks during the recession, resulting in some of the highest unemployment figures in the country. 254,000 New Englanders have lost their jobs in the last 2 years, 20 percent of the Nation's total. An incredible figure when New England makes up only 5 percent of the U.S. population. In April of this year, five of the six New England States had unemployment rates substantially higher than the national average of 6.8 percent.

The decline in capital in the region from September 1988 to December 1990 has slipped by 25 percent. The national decline is only 3 percent according to Federal Reserve data.

Mr. Chairman, in 1990, New England business failures rose 193 percent over 1989, while nationally business failures were up only 14.5 percent. The economic horror story of the region goes on and on. The national picture is not much better.

As you know 60 percent of the Nation's work force are employed by small businesses, and 50 percent of new jobs by the year 2000 will be created by small businesses. Therefore, it is crucial that we protect the backbone of our Nation's economy.

Furthermore, I agree with the President when he stated on September 30, 1991 and I quote "I worry about the economy. These are tough times. But we can do something about it." I also agree with him on his October 2 statement and I quote "We must create the right climate for business to flourish".

For these reasons, I joined other members of the New England delegation in introducing the Small Business Recovery Act of 1991, H.R. 3419. The Senate companion bill is S. 1753, and I applaud Senator LIEBERMAN and Senator DODD for sponsoring it. This measure would put capital back into the marketplace by making $500 million available to small banks for capital loans to small businesses.

Large businesses and large banks can obtain the necessary capital. It is the smaller ones that need our assistance and help. Congress must act now to preserve the jobs that are left and, most importantly, allow these businesses to expand.

One of the major differences between this recession and that of 1982 is the availability of

credit. I find it very disturbing and distressing that businesses all across the region can not secure needed capital in which to carry out business functions, yet these businesses are profitable and pay their loans back.

I must reiterate the importance of H.R. 3419 and the impact it will have on areas of the Nation that is in real economic trouble. The statistics can be recited all day long, but what we need in New England is capital for our small businesses and we need it now.

Mr. Chairman I would like to enter a statement by the president and chief executive officer of the New England Council Nick Koskores which clearly outlines in great detail the economic hardships the small business sector in New England is experiencing.

Statement referred to follows:

STATEMENT OF NICHOLAS P. KOSKORES, PRESIDENT AND CEO, THE NEW ENGLAND COUNCIL, INC.

INTRODUCTION

Mr. Chairman and members of the subcommittee, thank you for this opportunity to appear before you to present my views on the impact the credit crunch is having on the New England economy.

My name is Nicholas P. Koskores, and I am President and Chief Executive Officer of the New England Council, the nation's oldest regional business group. Founded in 1925 by business leaders and the six New England Governors, my organization also happens to be the most successful example of regional cooperation between the public and private sectors in the United States.

Since its very beginnings, The New England Council has dedicated itself to improving the economic vitality and the overall quality of life in the six state region.

I am here today to bring to your attention the disastrous impact the credit crunch is having on our, and to a growing degree, the nation's, economy.

I also want to share with you our thoughts on how to address this problem, which is drying up business activity, threatening the banking system that stands behind business development, and costing us jobs.

To show you the depth of concern in New England, The New England Council is a part of an even broader regional coalition, some of whose representatives are sitting besides me, representing well over 10,000 regional businesses.

This coalition of ten thousand includes the Smaller Business Association of New England, The Greater Hartford Chamber of Commerce, the Connecticut Business and Industry Association, the Connecticut Bankers Association, the Greater Providence Chamber of Commerce, the Associated Industries of Massachusetts, the Massachusetts Business Roundtable, the Massachusetts Bankers Association, the New Hampshire Bankers Association, and the Business and Industry Association of New Hampshire.

All of us have been hard at work with the New England Congressional delegation since January of this year, trying to find constructive solutions to the region's number one problem today.

THE NEW ENGLAND ECONOMY

Mr. Chairman, the recession in New England began a year and a half before the national recession, and has been much, much deeper. Total employment in New England, which peaked in January, 1989, had fallen 6.5 percent by March, 1991. In comparison, national employment continued to rise through June of 1990—17 months after New England had reached its peak—and fell only 1.5 percent by March of this year.

Between 1984 and 1991, New England lost over 22 percent of its manufacturing employment. Putting more of a human face on this statistic, that translates into some 335,000 workers who lost their jobs. But employment data does not tell the whole story. Sector by sector our industries have been losing market share to international competition and to other regions of the United States.

More significantly, New England's small business community has had its feet knocked out from beneath it. Last year saw a 193 percent increase in business failures in New England—close to twenty times the national failure rate over the same span of time.

New England is heavily reliant on small business and small technological start-up firms for its economic vitality. Unlike the past, New Englanders cannot expect another big job-producing major industry—like textiles or the high technology manufacturing sector—to bail the region out. To the contrary, New England's economic renaissance will depend on the many mini-engines of growth found in the small business and entrepreneurial sector.

This brings me to what makes today's recession worse than past recessions. During the 1982 recession, New England entrepreneurs were still able to find opportunities to finance business development, and they played a big role in making the region's economy the strongest in the nation during the mid-1980s. I very much doubt that those same opportunities would have existed in 1982 if credit was as tight then as it is today.

Small business is also the most important contributor to the nation's economy. Over half of all jobs in the United States are created by small business. According to some accounts, small business is also expected to create about 60 percent of all new jobs nationally through the end of this century. Fortune 500 companies no longer have that potential. As the credit crunch rolls westward across the nation, you can be sure that more and more small businesses will be threatened.

THE RELATIONSHIP BETWEEN SMALL BUSINESS AND BANKS

Small business is heavily reliant on bank credit and a close relationship with the local bank to fund its operations. Big business, on the other hand, has other options to secure financing. When bank capital dries up, further weakening the banking system, small business development is undercut. Richard Syron, President of the Federal Reserve Bank of Boston, who appeared earlier before you, documents that New England has experienced a far greater loss of bank capital than elsewhere in the nation. I submit to you that there is a causal relationship between the steeper decline in bank capital in New England and its disproportionately higher business failure rate.

Here are some numbers that dramatize the extent of New England's credit crunch:

New England banks have experienced a 20 percent loss of capital; the nation, a relatively modest 3 percent decline in capital.

The total commercial and industrial loans at New England thrift and commercial banks declined about 15 percent or $7 billion, representing about 45 percent of the national decline in loans.

According to the Smaller Business Association of New England, 35 percent of its members, responding to the question, "Has your bank renegotiated, capped or suspended lines of credit?" answered in the affirmative.

According to a survey by the Connecticut Business and Industry survey, approximately 82 percent of the membership believes that there is a credit crunch.

In a survey by the Business and Industry Association of New Hampshire, 74 percent of its respondents said there is a credit crunch; 4 out of ten respondents said that they were having difficulty obtaining credit.

According to the Massachusetts Industrial Finance Agency, one-half of the respondents to its survey indicated that they were having significant problems obtaining credit. The Associated Industries of Massachusetts report similar problems in its membership.

I am enclosing with my testimony a summary of selected responses to an Associated Industries of Massachusetts survey on credit availability that provides some concrete examples of the problems small companies are facing.

In sum, what New England is today experiencing has been accurately characterized as a "death spiral," beginning with a weak economy; exacerbated by a desperate banking crisis and numerous bank failures; and threatening to destroy the crucial role small business can play in pulling New England out of its current decline.

But the credit crunch and banking crisis can longer be isolated in New England. It has finally, indeed, been recognized as a national problem, involving also the rapidly climbing, astronomical cost to the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to bail out banks an manage their seized assets. Recent statements by Commerce Secretary Mosbacher and White House Economic Advisor Boskin recognize the national dimensions of the problem. Unfortunately, Treasury and the other banking agencies offer no solution other than to keep on coming back to the taxpayer for more money.

THE SMALL BUSINESS RECOVERY ACT OF 1991

Mr. Chairman, as best as I can, with as much detail as I could muster, I have tried to present the scope of the problem confronting New England businesses, and to describe the importance of sound banks to business development. Others on this panel will be even more graphic.

But speaking for The New England Council and the broader coalition of which The Council is a part, we find it unsatisfactory merely to wring our hands in public and complain. And we find it unacceptable to subject the American taxpayer to higher taxes when better solutions are available.

On behalf of The New England Council, let me offer a modest, but constructive proposal for the consideration of this panel. It is the product of The New England Council's Task Force on Credit Availability, chaired by my fellow panelist, Mr. Sheldon Pollock.

Called the Small Business Recovery Act of 1991 (S. 1753), it was recently introduced by Senators Joseph Lieberman and Christopher Dodd of Connecticut. A companion bill has also been filed on the House side (H.R. 1349) by by U.S. Representatives Nicholas Mavroules of Massachusetts and Nancy Johnson of Connecticut.

S. 1753 represents a very do-able program that can help New England and, I believe, the nation in response to the credit crunch. The bill's aim is to establish a targeted, self-financing pilot program in New England. Specifically, it would authorize the Small Business Administration to guarantee the purchase of stocks or debentures in banks on condition that the eligible banks lend to worthy small businesses.

Moreover, the legislation focuses on smaller banks, traditionally the ones who lend to

small business: Only banks with assets under $1 billion would be eligible for the program. The maximum amount to be guaranteed annually by the Small Business Administration would be $425 million, to be spread equitably throughout the region. Moreover, the program limits the total investment per bank to $4.5 million.

The program would also be self-financing. Eligible banks would be assessed an origination fee and an annual premium of two percent of the dollar amount guaranteed by the Small Business Administration to cover the cost of the program.

What does this mean to small business? Simply, it means that for every new dollar in bank capital, bank assets increase 12-fold. Using a 70 percent loan-to-deposit ratio, it means that for every bank with $60 million in new assets, there could be over $38 million in new loans made available.

To paraphrase, money is the root of all enterprise. New available credit translates into greater business activity and productivity—and more jobs.

Ideally, we in New England would like to see some form of open bank assistance, or a new Reconstruction Finance Corporation. During the depression, the RFC actually held close to 50 percent of all bank capital. But political realities compel us to join you in practicing the art of the possible.

Because of its targeted nature and self-financing mechanism, the Small Business Recovery Act of 1991, while not a panacea, seems to us to be a solid forward step. Ultimately, we see this pilot program as a model adoptable for use elsewhere in the nation. Thus we urge your favorable consideration of S. 1753.

Again, thank you for this opportunity to testify. Mr. Chairman, on behalf of The New England Council, I want to thank you for your leadership, and that of Senators Dodd and Kerry, on this important issue.

I would be pleased to take any questions you may have.

Mr. RIGGS. Mr. Chairman, I am happy to report that once again we've managed to snatch defeat from the jaws of victory. I am appalled at the direction this legislation has taken on the floor of the House.

In a time of economic recession, it seems contradictory to me to claim we are attempting to reform the financial system, in an effort to protect the taxpayer from another S&L style debacle, at the same time we make it impossible for depository institutions to operate in a profitable manner. When the Banking Committee reported H.R. 6, it was with a sense of logical give and take. We established a linkage between increased bank insurance fund premiums with more stringent regulation and broadened powers with expanded business horizons.

I have honestly never seen the credit markets in California more skittish. In conversation with a number of bank executives from the First Congressional District I have heard the same litany of frustration. Bankers are saying that in addition to being battered by a declining real estate market and generally poor economic conditions, they are being strangled by the regulators. They are having to increase loan loss reserves on even current loans. Bankers see the only alternative is to shrink assets and stick to the safest possible course. In other words, batten down the hatches and weather the storm as best they can.

The administration sent us a balanced, well-crafted package, albeit controversial in many respects, but still a bill which would have had the net effect of strengthening the American banking system.

The Banking Committee acted responsibly by carefully considering and debating at some length all facets of the legislation. The results reported was a progressive and responsible bill.

Now the emphasis has shifted from policy and substance to special interest politics with the result that the bill has been twisted beyond repair or recognition.

The path Congress has taken with this bill will lead to the following:

First, further "ratcheting" down of regulation; regulation so onerous and burdensome that the profits of banks will be greatly diminished.

Second, a bill that will do nothing to address the severe macroeconomic problems in the United States or stimulate capital formation and job creation.

Third, a bill that could very well make marginally solvent banks insolvent and healthy banks significantly weaker. The net effect of which will be increasing, not lessening, the strain on the BIF and the risk of a large-scale taxpayer bailout of the banking industry.

Mr. OBERSTAR. Mr. Chairman, after careful consideration and deliberation, I have decided to vote no on the final passage of the Deposit Insurance and Regulatory Reform Act (H.R. 6).

Like most Members in this body, I realize that our country's banking industry is reeling from the effects of economic recession and years of negligent regulatory enforcement during the height of the 1980's borrow, lend, and spend craze. The collapse of over 400 banks since President Bush took office is morbid testimony to this legacy of regulatory negligence and deterioration of the national economy.

The rash of bank failures has put an enormous strain on the Federal Deposit Insurance Corporation's [FDIC's] bank insurance fund [BIF], which is on the verge of being depleted. Replenishing the BIF is critical, and I support the bill's FDIC recapitalization provisions for achieving that goal.

However, I cannot support a bill that takes steps such as this bill does toward deregulating big banks. When savings and loans [S&L's] were deregulated in the early 1980's, the Reagan administration assured Congress that the risks were low and the returns to the economy would be high. The financial debacle that followed led to the most expensive Government bailout in our Nation's history. Now the Bush administration is trying to sell Congress on the merits of loosening regulations on banks, promising that "free and open competition" will lead to a stronger and more profitable financial services industry.

Providing security services and permitting wide-scale interstate branching are said to be small steps that will allow big banks to become profitable. We have also been assured that adequate "firewalls" and other protections will be implemented to prevent another S&L fiasco from developing. I've served in this House long enough to have seen too many "small" steps turn into "first" steps. Once the torch is lit, amendments, reconciliation bills, and other legislative vehicles can easily burn down firewalls, leaving us with an inferno blazing out of control. Call it whatever you'd like; this is a "deregulation" measure.

We should pause a moment here, before the vote on passage and recall the lessons of the savings and loan experience: the failed judgments of S&L officials in the marketplace, and the failure of the Federal Government's S&L regulatory agency to act vigorously in the public interest to prevent or to correct abuses. I cannot and will not support any bill that, no matter how remote the possibility, could lead us down the S&L path. Therefore, I will vote against H.R. 6 in its present form.

Mr. HOUGHTON. Mr. Chairman, very briefly let me urge my colleagues to recommit this bill as it appears to emerge for these past few days dictate. In brief it is a bad bill. It shuns reality. It is an intellectual answer to a real world problem.

Two points:

First, the Banking Committee worked for 2 years on a bill. Over a few days this was scrapped, and through the old tried and true method of smoke filled roomanship, a new bill was given birth. It had little resemblance to the 2-year product. I call this unprofessional. We also pledge to give this body respect, and when there is a reason we thumb our nose at it.

Second, the point I would like to make is that the entire reason for a Banking bill is to help the financial structure of this country, not hurt it. We already face enough trouble with the savings and loan fiasco. Why, I ask you, must we wake it worse. I thought our job was to help Americans face a new world of competition. When I first became associated with banking the United States had 8 out of the 10 largest, most profitable banks in the world. Today we offer up only 1 in the top 25.

Title IV I predict will eliminate that last one. It ignores the real world. Keep it and we deserve what we get—continued, creeping obsolescence. Why—why do we continue doing this to our selves.

I urge my colleagues to vote for recommital. Thank you.

Mr. WEISS. Mr. Chairman, I rise in support of H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991. Years of inquiry, testimony and examination by the House Committee on Banking, Housing, and Urban Affairs have culminated in this historic reform vehicle which will prudently modernize our banking system while reinforcing various safety mechanisms. It is of the utmost importance to my constituents in New York City to minimize taxpayer exposure while simultaneously reinvigorating the commercial banking industry of our city and Nation. H.R. 6 addresses these two vital concerns.

The need for reform is clear and urgent. Nationwide, one of every eight banks is losing money, with hundreds more operating on small or virtually nonexistent margins. The present decline reaches proportions we have not seen since the depression, ironically, when many of the laws we now are reforming, were first enacted. From 1933, when federally guaranteed deposits came into existence, to 1979, we witnessed the failure of 558 insured banks, an average of 12 failures per year. However, from 1980 to 1990, 1,200 insured banks either failed or were rescued by the Federal Deposit Insurance Corporation [FDIC], an average of 120 per year—or an annual rate 10 times greater than the previous 46 years. Even more

striking was the pace of failures during the last 3 years of the past decade. Between 1986 and 1989, there were 603 failures, that's 200 per year. The losses posted by major banks in the last 2 years, the subsequent rush to consolidate, and the near-desperate sale of assets, illustrates that things have not improved. Unfortunately, the bleak performance of our banks are not self contained, they ripple exponentially through our economy. The inevitable credit crunch incurred by bank losses and failures have grounded an economic recovery to our recession from ever taking off.

As the guarantor of deposits, our Government backs the depositors of the banking system. Make no doubt about it, the swift and fundamental reforms included in H.R. 6 are desperately needed, if we are to see the banking industry rise from the canvass mat.

Title I of H.R. 6 contains what may be the bills' most urgently needed and important provision, the recapitalization of the bank insurance fund [BIF] which provides deposit insurance coverage to banks. It is estimated that BIF will only have a balance of $2.9 billion in its coffers by the end of 1991, and given FDIC predictions that 137 banks will have failed during 1991 and 200 more are expected to join their ranks in 1992, the fund is now effectively insolvent. The FDIC emblem, prominently displayed in bank windows and teller booths across the country, is a powerful symbol providing security and piece of mind to every depositor who utilizes a federall insured institution. The Government must keep and will keep its nearly 60 year old promise to back those deposits. H.R. 6 increases the FDIC's line of credit with the Treasury from $5 billion to $30 billion. These funds would be used to cover losses of federally insured banks if FDIC funds are depleted. The extended line of credit will be financed through the assessment of a special premium on federally insured institutions.

Under the bill, the FDIC may not use its Treasury line of credit unless the FDIC and the Treasury department establish a schedule under which the borrowed funds will be repaid. This schedule must show that the premium income of the FDIC is sufficient to repay the funds borrowed and the interest that accrues. The General Accounting Office will be required to report quarterly to Congress on the FDIC's progress in repaying these borrowed funds.

The measure incorporates numerous other provisions which reduce the risk of future losses to the FDIC fund and reduces taxpayer exposure to another bailout. These changes include eliminating the "too-big-to-fail" policy, prohibiting undercapitalized institutions from accepting brokered deposits, establishing risk-based premiums for banks, mandating uniform auditing and accounting standards, strengthening oversight of foreign banks' U.S. activities, creating an early intervention system in cases of soon-to-be defunct banks and requiring the FDIC to pursue least-cost resolution for those institutions that have gone under.

H.R. 6 also contains provisions addressing consumer protections and service to distressed communities. The measure seeks to ban the practice of using the endorsement of a check as an authorization for the automatic withdrawal of funds from an endorser's accounts. In addition, the bill establishes the Bank Enterprise Act under which financial institutions could reduce their deposit insurance premiums for increasing their activities in distressed communities.

As well as protecting consumers and taxpayers, the bill enacts many provisions to make banks more financially and internationally competitive. H.R. 6 eliminates existing restrictions on interstate banking and branching imposed under the McFadden Act of 1927 and the Bank Holding Act of 1956. The measure would permit bank holding companies to acquire banks or bank holding companies located in other States without restriction and to operate those banks as direct branches, effective 3 years after enactment. The bill also ends the prohibition against the branching of federally chartered banks in other States, effective in 3 years. States would be permitted to impose certain filing requirements upon out-of-State national banks, but only if they are similar to requirements imposed on other out-of-State businesses.

The current bill permits banks to affiliate with securities firms that could engage in a full range of securities activities. However, securities activities other than certain municipal securities, would have to be moved to either a subsidiary of the bank or an affiliated securities firm. These ample powers are tempered by the establishment of strong firewalls to ensure the integrity of the securities markets and further safeguard the deposit insurance system. In addition, the legislation continues the present prohibition on commercial ownership of banks and affiliation with insurance companies.

Banks do need to stand on a more competitive basis with other financial service providers, but that reform cannot be made at the expense of the American taxpayer. To allow banks broad diversification into securities' activities in order to bring about their recovery, without erecting solid firewalls, is like trying to put out a blazing fire with a shower of gasoline. H.R. 6, in its present form, provides much-needed diversification with sensible regulatory and enforcement muscle. I urge my colleagues to support its passage.

Mr. MATSUI. Mr. Chairman, I would like to take a moment to compliment the chairman of the House Banking Committee, the ranking member and the members of the committee for assuring that pass through deposit insurance on section 457 plan funds continues. As the chairman knows, in May of this year I introduced legislation which would have continued pass-through deposit insurance on section 457 plan funds. These funds are deferred compensation arrangements available only to employees of State and local governments. Legislation is necessary because unless Congress acts, pass-through deposit insurance on these funds will expire on January 29, 1992. This will be harmful to hundreds of thousands of depositors, but perhaps nowhere more than in my own State of California where more than any other State, government employees have found the 457 plan very attractive and have used them extensively.

Let me briefly explain why government employees find 457 plans so attractive and why I am strongly in favor of the Banking Committee's action and the provisions of H.R. 6 which protect deposit insurance on 457 plans. A 457 plan is a deferred compensation plan which is available only to employees of State and local governments. It permits a maximum of $7,500 in wages to be deferred annually. Since 1986, the only deferred compensation program that an employee of State or local government can have is a 457 program. Thousands of Californians and hundreds of thousands of public employees throughout the country now use 457 programs. For example, employees of the city of Los Angeles, Sacramento, San Diego and New York are actively involved in 457 plans. Nationally, as many as 150,000 government workers have placed funds in 457 plans. The funds can be invested in a number of investment vehicles, including insured deposits in financial institutions. Without enacting the appropriate provisions of H.R. 6, however, those deposits will become uninsured, leaving about $3½ to $4 billion in government employee funds, now in financial institutions, primarily thrifts, uninsured.

I believe that, if this Congress does not act, some of the most valued people in our society—firemen, policemen, teachers, nurses, judges, forest rangers, clerical workers, sanitation workers, and many, many more—will feel that a promise has been broken. That promise was made when these workers, in good faith, placed funds in financial institutions believing that those funds would continue to enjoy federal deposit insurance on a pass-through basis. As reported by the committee, H.R. 6 had no cutbacks in any of the other pass-through deposit insurance funds, including the private sector equivalent of the 457 plan—the 401(k) plan. How could we have explained to State and local government workers that they had been treated fairly if we had permitted pass through deposit insurance on section 457 plan funds in financial institutions to expire? That is why I am pleased that H.R. 6 has a provision which preserves deposit insurance on 457 funds.

Finally, perhaps one of the most important features of the amendment of the Banking Committee is that it introduces additional competition into the gathering of 457 plan funds. The Banking Committee's amendment and my legislation would permit thrift institutions to continue to have 457 plans insured on a pass-through basis for 457 plan participants, and opens up the field to commercial banks as well. Until now, that has not been possible and that is another reason why I support this provision and hope it will be enacted.

Again, Mr. Chairman, I commend your efforts, those of the ranking member and of the committee.

Ms. NORTON. Mr. Chairman, I rise in support of H.R. 6, the Deposit Insurance and Regulatory Reform Act. I do so, however, with great reservation. During the last decade, the watchdogs of the Federal Government have been asleep at the switch while the American banking industry made billions of dollars of bad loans. At the same time, they disproportionately denied minorities access to residential and commercial credit. The impact of this is plainly visible—failed banks, reduced mortgage availability, and increased business failures. The time has come for change, and this legislation, while taking some positive steps, does not go far enough to accomplish what is needed.

On October 21, 1991, the Federal Reserve Board issued a Home Mortgage Disclosure

Act report which revealed that blacks and Hispanics applying for mortgage loans are significantly more likely than white applicants to be denied credit. This is a deplorable situation. The Congress passed both the Home Mortgage Disclosure Act and the Community Reinvestment Act [CRA] to prevent the race of the applicant from determining access to loans, but it continues to be a factor to this day. The CRA was designed to ensure equal access to loans for minorities, and Federal regulators have done little over the past years to enforce it. Before the banking industry is granted expanded powers, such as those provided for in this bill, I would like to see new provisions in place to strengthen CRA compliance, and both the industry and Federal regulators demonstrate that they have cleaned up their acts.

Chairman GONZALEZ has taken a leading role on these issues. He developed H.R. 6 to establish bank capitalization standards to address the loan default problem. He also recently urged the administration to take immediate action to ensure that the current laws against loan discrimination are enforced. Both the chairman and I supported the amendment offered by my colleague Mr. KENNEDY, which would have forced banks attempting to open interstate branches to first show compliance with the CRA. But the Kennedy amendment failed, sending a message to the banking industry that you can expand without complying with the current antidiscrimination laws. This message is clearly wrong. The redlining must stop. The banking industry must be held accountable for its failures.

The District of Columbia Council focused its attention on local CRA compliance during public hearings held in 1989. At that time, many District banks made new commitments for local investment. Since then, however, the overall compliance has been disappointing as some banks have fulfilled these CRA commitments, and some have not.

The problems in the savings and loan and banking industries have placed an ever increasing burden on the American taxpayer. The insolvency of thousands of financial institutions is continuing to force this Congress to ante up billions for the support of the deposit insurance system. Funding these bailouts has made it more difficult to find money for programs designed to benefit the less fortunate of our society. Yet, those who could not get credit—because of discrimination—are also being asked to foot the bill for losses caused by those who did get them.

Certainly, the time has now come to ensure the future solvency of the banking system by increasing the regulatory and enforcement powers of the Federal Deposit Insurance Corporation, Federal Reserve Board and the Comptroller of the Currency. The provisions contained in this bill accomplish this by creating a system of capitalization ratings, and requiring yearly audits of all banks. These measures will provide early warnings to bank regulators of possible problems at financial institutions. Meaningful and timely steps can then be taken to minimize the number and impact of bank failures.

In the District of Columbia, the need for tough enforcement provisions became clear this past year with the Latin Investment scandal. With newly enacted legislation in place, the District of Columbia Office of Banking and Financial Institutions has since been aggressively monitoring the banking activities under its supervision, and has taken corrective action when needed.

District law currently authorizes the Office of Banking to permit out-of-State banks to establish branches within the District, if they agree to meet community development and investment requirements. The Vento amendment, which I supported and was approved to title III of this bill, is a strong and necessary step for continued State control of banking activities. It allows State agencies like the District of Columbia Office of Banking and Financial Institutions, to continue exercising regulatory powers over banks wishing to enter its jurisdiction. The bill would have stripped State regulators of this important means of ensuring delivery on the investment commitments made by out-of-State banks.

Given the poor enforcement record of Federal regulators, we should be strengthening State supervisory powers, rather than diminishing them. With this in mind, I will soon introduce legislation giving the District of Columbia Office of Banking and Financial Institutions primary regulatory authority over all nonfederally chartered banks in the District. The Office of Banking currently shares this authority with the Comptroller of the Currency, a situation which pre-dates home rule. No other State's bank regulatory agency is in this situation. Now that the District has the regulatory tools to do the job itself, the time for this change has come.

Mr. Chairman, the administration and banking interests contend that banks must be allowed to exploit new opportunities so that they will be better able to compete and survive in a changing financial services marketplace. But if we are to permit this, we cannot allow these same banks to continue their practices of the past. I will reluctantly support this bill. But, if banking institutions are to be permitted to expand their range of services, I would prefer that they first be required to demonstrate a willingness to provide equal access to credit in the minority communities that they serve, and demonstrate that they are adequately capitalized to prevent any risk to the depositors or taxpayers.

Mr. DINGELL. Mr. Chairman, in response to Members' questions about the content of the Gonzalez-Dingell compromise on title IV and in lieu of the filing of a formal committee report thereon, the following section-by-section analysis is submitted to serve as the legislative history of title IV. Reference should also be made to House Report 102–157, part 1 which was filed by the Committee on Banking, Finance, and Urban Affairs on July 23, 1991, and to House Report 102–157, part 4 which was filed by the Committee on Energy and Commerce on October 4, 1991.

TITLE IV—FINANCIAL SERVICES MODERNIZATION

SUBTITLE A—AMENDMENTS TO FEDERAL BANKING LAWS

CHAPTER 1—FINANCIAL SERVICES HOLDING COMPANIES

Sec. 401. Financial Services Holding Companies

This section amends the definitions contained in section 2 of the Bank Holding Company Act of 1956.

Subsection (a)(1) defines a "financial services holding company" as any company that controls any bank.

Subsection (a)(2) deletes a provision that by its own terms has expired.

Subsection (a)(3) amends subsection 2(f) to include a definition of "appropriate Federal banking agency" to provide that such term has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (FDI). The term "Board" is defined to mean the Board of Governors of the Federal Reserve System.

Subsection (a)(4) adds a series of new definitions to the Bank Holding Company Act. These definitions include:

Securities affiliate. A securities affiliate is defined in new subsection (n) as any company that is controlled by a financial services holding company and is engaged in the United States in activities that would not be permitted under section 4(c) of the Bank Holding Company Act for any subsidiary of a financial services holding company but for the authorization contained in section 4(c)(15) thereof.

Foreign bank. Under new subsection (o), the term "foreign bank" has the same meaning as the term has under section 1(b)(7) of the International Banking Act of 1978.

Insured depository institution. New subsection (p) defines the term "insured depository institution" by reference to section 3(c)(2) of the FDI Act.

Level 1 and level 2 depository institutions. These terms are defined under new subsection (q) by reference to new section 38 of the FDI Act (as added by Title I of this Act).

Level 1 financial services holding company. New subsection (r) provides that the term "level 1 financial services holding company" means any financial services holding company not less than 80 percent of the banking assets of which are held by level 1 depository institution subsidiaries and any other banking assets of which are held by level 2 depository institution subsidiaries.

Functional regulator. Under new subsection (s), "functional regulator" is defined as any Federal agency or State supervisory authority that has supervisory authority over activities of any company which is a financial services holding company or any subsidiary of any such company (other than an insured depository institution).

New financial activity. New subsection (t) provides that the term "new financial activity" means any activity described in sections 4(c)(8) or 4(c)(15) of the Bank Holding Company Act. It does not include any activities authorized by the Board pursuant to the closely related to banking standard under section 4(c)(8) by regulation or order that is in effect on December 31, 1992.

Qualified financial activity. New subsection (u) provides that the term "qualified financial activity" means any activity described in sections 4(c)(8) and 4(c)(15).

Financial affiliate. Under new subsection (v), the term "financial affiliate" means any subsidiary of a financial services holding company (other than an insured depository institution) that is engaged in the United States in qualified financial activities.

Section 401(b) makes certain conforming amendments in the Bank Holding Company Act including replacing references to "bank" with "insured depository institution" and replacing references to "bank holding company" with references to "financial services holding company."

Sec. 402. Acquisition of Banks

Section 402 amends the application procedures in section 3 of the Bank Holding Com-

pany Act for acquisitions of banks, savings associations, and financial services holding companies.

Subsection (a)(1)(A) amends section 3(a)(3), which prohibits the acquisition of more than 5 percent of a bank without the prior approval of the Board, to encompass acquisitions of insured depository institutions and financial services holding companies.

Subsection (a)(1)(B) makes it unlawful for any insured depository institution to become a financial services holding company. This changes current law which permits banks to be holding companies. This does not apply to foreign banks with insured branches in the United States.

Subsection (a)(1)(C) provides that companies that were bank holding companies on December 31, 1992 shall be financial services holding companies as of January 1, 1993 without obtaining the approval of the Board. This exemption is a one-time exemption for bank holding companies becoming financial services holding companies as a result of the enactment of this legislation. It applies to both companies regulated as bank holding companies and holding companies which will be financial services holding companies after January 1, 1993 but which maintain their exempt status under section 4(f) of the Bank Holding Company Act.

Subsection (a)(1)(D) permits reorganizations of banks into holding companies without obtaining the prior approval of the Board if, after the reorganization, the bank's shareholders will have substantially the same proportional share interest in the holding company as they had in the bank, the bank is a level I or level 2 depository institution after the reorganization, the holding company only engages in managing and controlling banks after the reorganization, and the holding company provides 30 days prior written notice to the Board.

Subsection (a)(2) makes technical amendments to the notice and hearing requirements in section 3(b) of the Bank Holding Company Act to provide that the Board will notify any other appropriate Federal banking agency and the State bank supervisor, if appropriate, when it receives an application for an acquisition of an insured depository institution.

Subsection (a)(3) expands the factors that the Board may consider in evaluating an acquisition, merger, or consolidation under the Bank Holding Company Act to include the safety and soundness of the insured depository institution to be acquired or of the insured depository institutions that are currently controlled by the holding company.

Subsection (a)(4) adds a new subsection (d) to section 3 of the Bank Holding Company Act to establish expedited procedures for acquisitions of additional insured depository institutions by level 1 financial services holding companies.

Under the expedited procedures, the Board must notify the appropriate Federal banking agency and any appropriate State bank supervisor in the manner provided in section 3(b) of the Bank Holding Company Act upon receipt of a completed application. The appropriate Federal banking agency and the State bank supervisor have 21 days after receipt of notice from the Board to submit their views and recommendations. The Board has 45 days to act on the application from the date a complete application is received. If the Board fails to act, the application will be considered approved. The 45-day period can be extended if any appropriate Federal banking agency or the State bank supervisor recommends disapproval. If any appropriate Federal banking agency or State bank supervisor recommends disapproval, the Board must follow the regular procedures for notice and hearing contained in section 3(b). The 45-day time period can be waived by the Board in the event of an emergency or if the insured depository institution is in danger of default.

Subsection (b) contains conforming amendments to the Bank Holding Company Act including the substitution of references to "financial services holding company" for "bank holding company" and references to "insured depository institution" for "bank."

Sec. 403. Interests In Nonbanking Organizations

Section 403 amends section 4 of the Bank Holding Company Act to describe permissible nonbanking activities for financial services holding companies.

Subsections (a) (1) and (2) delete provisions that have expired and make certain conforming amendments.

Subsection (a)(3) amends subsection (a)(2)(A) to provide that financial services holding companies cannot be banks. Foreign banks that are financial services holding companies are permitted to carry on banking activities in the United States, if such activity is otherwise permitted through a branch or agency as those terms are defined in the IBA.

Subsection (a)(4) provides that subsection (a)(2)(B) of the Bank Holding Company Act is amended by inserting: "permitted under subsection (c)(8) or (c)(15) in accordance with subsection (i) or (k), subject to all conditions specified in this section or in any regulation prescribed or order issued by the Board under this section." This is a technical correction that clarifies that the Board may impose conditions on its approval of any proposal by a financial services holding company to engage in securities activities or activities of a financial nature. The Board has this authority under the existing provisions of the Bank Holding Company Act. The technical changes are necessary to conform this section to the new sections added by H.R. 6. However, Congress does not intend that the Board use this provision to restrict the day-to-day activities of a securities affiliate, once it has been approved by the Board.

Subsection (a)(5) substitutes a new section 4(c)(8) to the Bank Holding Company Act to allow a financial services holding company to own the shares of any company engaged in any activities which the Board has determined by order or regulation to be of a "financial nature" in accordance with new section 4(i) of the Bank Holding Company Act. It is not intended that commercial activities be defined as of a "financial nature."

Subsection (a) (6) and (7) make technical corrections to subsections (c) (13) and (14) of the Bank Holding Company Act.

Subsection (a)(8) adds a new section 4(c)(15) to the Bank Holding Company Act which allows a financial services holding company to own the shares of any company engaged in specified securities activities.[1] As amended, paragraph (15) would include: (A) underwriting, distributing, or dealing in securities; (B) organizing, sponsoring, controlling, or promoting any registered investment company pursuant to the Investment Company Act of 1940; (C) securities brokerage, private placement, or investment advisory activities; or (D) other activities that require such company to register with the Securities and Exchange Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser.

This section has been revised to clarify that the securities activities authorized under H.R. 6 include any activity that would require a company to register as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser under the relevant federal securities laws. As originally written, this section would have authorized a securities affiliate of a financial services holding company to engage in any activity that is permitted for a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. Because the federal securities laws do not establish or limit the nonsecurities activities that may be conducted by a company that is a registered securities broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, this provision could be construed to permit a securities affiliate to engage in a wide range of nonsecurities activities. The amendment to this section clarifies the intent to authorize securities affiliates to conduct only securities activities that are listed specifically in the section or that are securities activities that require registration under the federal securities laws. In this regard, it is intended that securities activities authorized under section 4(c)(15) would include activities normally engaged in by securities firms, such as merchant banking and foreign exchange transactions.

Subsection (a)(9) strikes the last two sentences of subsection (c) of the Bank Holding Company Act.

Subsection (a)(10) adds a new subsection (i) to section (4) of the Bank Holding Company Act. Under current law, the nonbanking activities of bank holding companies are limited to activities that the Board has determined to be "closely related to banking." H.R. 6 revises this standard to permit financial services holding companies to engage in any activities that the Board determines to be "of a financial nature." This is a more flexible test that is intended to permit the Board to take account of new developments in the provision of financial services, including technological and other developments in the financial markets generally, in authorizing new activities for financial services holding companies. Because H.R. 6 specifically authorizes financial services holding companies to own companies engaged in a variety of securities activities, including securities underwriting and dealing activities, the bill does not permit the Board to authorize these securities activities under this broader test. It is also intended that the Board not determine that any additional securities activities meet the current "closely related to banking" test during the period of time prior to the effective date of the new powers permitted by H.R. 6.

New Section 4(i)(3) provides that a financial services holding company must conduct its securities underwriting and dealing activities as well as other securities activities that are newly authorized by this bill within a Section 4(c)(15) securities affiliate that is subject to the firewalls and other prudential limitations in the bill. In addition, a financial services holding company that chooses to conduct securities placement activities that involve accepting risk as principal must

[1] Under current law, as discussed below, bank holding companies may affiliate with securities firms whose activities have been determined to be "closely related to banking" under Section 4(c)(8) of the Bank Holding Company Act.

do so within the securities affiliate, subject to the limitations applicable to securities affiliates. The bill permits financial services holding companies to continue to conduct certain securities activities that have already been authorized for bank holding companies under the existing provisions of the Bank Holding Company Act in a nonbank company that is not a securities affiliate subject to the limitations in the bill. The activities that may be conducted outside of the securities affiliate are limited to securities brokerage and advisory activities and underwriting and dealing in certain securities that a national bank would be permitted to underwrite and deal in directly within the bank (such as U.S. government securities). These activities are, however, subject to regulation by the SEC and will be limited by the section 23A and 23B protections contained in the Federal Reserve Act.

Some bank holding companies have already been permitted, under the current "closely related to banking" test, to own nonbanking companies that underwrite and deal in securities that are not eligible for a national bank to underwrite and deal in (so-called "section 20 companies"). Financial services holding companies that own section 20 companies may retain these companies for no more than three years following the date of enactment of the bill unless the holding company obtains Board approval to retain the company as a securities affiliate subject to all of the provisions and limitation in the bill applicable to newly authorized securities activities.

New section 4(i)(4) states that real estate activities are not of a financial nature for purposes of section 4(c)(8) except to the extent that the Board has approved such activities pursuant to the closely related standard in section 4(c)(8) prior to May 3, 1991.

New section 4(i)(5) states that insurance activities are not of a financial nature and no financial services holding company and no thrift institution subsidiary or insured institution subsidiary of a financial services holding company or subsidiary of such insured institutions may provide insurance as principal, agent, or broker except to the extent permitted under subparagraphs (A) through (G) of section 4(i)(5) of the Bank Holding Company Act which are intended to be identical to former subparagraphs (A) through (G) of section 4(c)(8) of the Bank Holding Company Act of 1956.

New section 4(i)(6) provides that a financial services holding company may not permit any bank subsidiary (or any subsidiary of such bank) to provide insurance as principal, agent or broker outside the State in which the bank is chartered unless such insurance activities in the nonchartering State are specifically authorized by the statutes of the nonchartering State. This limitation is imposed on "any bank subsidiary," including a national bank. It is intended that a national bank be considered to be chartered in the state in which it has its principal place of business. However, insurance may continue to be provided on an interstate basis so long as the coverages provided insure against the same type of risk or are functionally equivalent to those provided on or before June 1, 1991, and to the extent that the activities were lawful and not subject to legal challenge on that date, and subject to state regulation and control. The language "otherwise functionally equivalent to" is not intended to be interpreted in order to defeat the prohibitions set forth in this provision. For example, this provision may not be construed as authorizing the sale of ordinary life insurance by a bank that had previously been authorized to sell credit-related life insurance.

New section 4(i)(7) concerns the activities of an undercapitalized savings association that is acquired by a financial services holding company. H.R. 6 generally limits the securities, insurance, and real estate activities of insured depository institutions. The bill would permit undercapitalized savings associations that are acquired and recapitalized by financial services holding companies to continue to conduct these activities to the extent that they are permissible for a Federal savings association. This provision adds to paragraph (A) the parenthetical "(other than subsection (f))" to clarify that the exemption from the activities restrictions would not override the restriction on activities currently applicable to commercial companies that own so-called nonbank banks. Under current law, these companies retain their special exemption from the restrictions of the Bank Holding Company Act only so long as they continue to limit their activities and growth. This provision also adds to paragraph (A) the parenthetical "(other than paragraph (5))" to clarify that thrifts acquired by financial service holding companies are subject to the same restrictions contained in section 4(i)(5) of the Act as bank holding companies with respect to insurance activities.

New section 4(i)(8) requires the Board, whenever it makes a determination under subsection (c)(8) that any activity is an activity of a financial nature, to publish in the Federal Register, not later than seven days thereafter, the regulation or order by which such determination has been made and a description of the activity.

New section 4(j) of the Bank Holding Company Act provides for the transfer of certain securities activities upon a financial services holding company's acquisition of a securities affiliate. Paragraph (1) provides that a financial services holding company that acquires control of a securities affiliate may not permit any insured depository institution it controls to engage in the United States in any securities activity except to the extent specifically permitted for a national bank by statute or by regulations, order, interpretation, or approval of the Comptroller of the Currency (see Table A for a list of such approvals to date) before the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. Paragraph (1) is amended to provide further that such securities activity may not involve the underwriting or distributing of securities backed by or representing an interest in mortgages or other assets originated or purchased by the national bank or any affiliate of the bank. This prohibition applies one year after the date of the acquisition of any securities affiliate.

Further, paragraph (2) provides that a financial services holding company that controls or acquires control of a securities affiliate may not permit any insured depository institution subsidiary of such company to underwrite or deal in obligations issued by a State or political subdivision; such activities may be conducted *only* by a securities affiliate in accordance with subsection (c)(15). This prohibition also applies one year after the date of the acquisition of any securities affiliate. Paragraphs (3) and (4) apply the same prohibition, respectively, to broker-dealer activities and to investment company activities, with an effective date of January 1, 1993.

Paragraph (5) states that section 4 of the Bank Holding Company Act shall apply to branches and agencies of foreign banks, and commercial lending companies owned by foreign banks, as if such branch, agency or commercial lending company was a bank.

Section 403 adds a notice provision in new subsection (k) to Section 4 of the Bank Holding Company Act. Subsection 4(k) requires any company to give at least 45 days prior written notice to the Board before engaging in, or acquiring or retaining ownership or control of the shares of a company engaged in, any nonbanking activity or any qualified financial activity. Similar to subsection 4(a)(4), Congress does not intend that the Board use this provision to restrict the activities of an affiliate that is a registered broker-dealer, once the acquisition or retention of such broker-dealer has been approved by the Board.

The notice must contain information required by the Board, by regulation or on a case-by-case basis. The Board may disapprove an activity or transaction by issuing an order to the holding company setting forth the reasons for disapproval before the end of 45 days following receipt of the notice. A notice shall be deemed to be approved unless it is disapproved within the 45-day period. The 45-day period may be extended an additional 45 days. A holding company may proceed with a transaction sooner if it receives written notification of approval from the Board. With respect to particular activities, the Board may eliminate the notice requirement or shorten the notice period. With respect to a proposal to engage in a 4(c)(8) activity not previously approved, the Board may extend the notice period for an additional 90 days.

Subparagraph (1)(D)(ii) provides that the Board may prescribe regulations which provide for no notice to be given with respect to a financial services holding company's engaging in nonbanking activities or acquiring or retaining ownership or control of companies engaged in qualified financial activities. An exception is established, however, that precludes no notice with respect to activities or transactions described in section 4(c)(15). It is expected that any shorter notice periods that may be established pursuant to this subparagraph with respect to such activities or transactions will remain of sufficient duration to enable the Board to consider the criteria for review in paragraph (2) of subsection 4(k).

New section 4(k)(2) sets forth the general standard for Board review. In evaluating a notice, the Board must generally use the following criteria: managerial resources; financial resources, including capital; any material adverse effect on the safety and soundness or financial condition of an affiliated insured depository institution; and whether there is any reasonable expectation of a public benefit that would outweigh any possible adverse effects. The Board must disapprove a proposal if any insured depository institution (or subsidiary thereof) controlled by the holding company is engaging in an unsafe or unsound practice or is in an unsafe or unsound condition.

Subsection (1) of section 4 of the Bank Holding Company Act provides that a financial services holding company may only engage in, or acquire or retain the shares of a company engaged in, any new financial activity, as defined in section 2 of the Bank Holding Company Act, if the holding company is a level I financial services holding company.

Subsection (m) of section 4 of the Bank Holding Company Act provides that any financial services holding company which en-

gages in, or controls a company engaged in, any new financial activity and ceases to qualify as a level 1 financial services holding company must either restore the capital of insured depository institution subsidiaries in an amount sufficient to regain level 1 status or submit a capital plan, the implementation of which will allow the holding company to regain level 1 status. If a holding company fails to restore capital or implement a capital plan, it must divest its insured depository institution subsidiaries that are below minimum capital or terminate its new financial activities. The Board must promulgate regulations concerning appropriate capital standards and requirements for financial services holding companies. The Board and the appropriate Federal banking agencies must coordinate the application of these requirements with new section 38 of the FDI Act, as added by section 131 of Title I of this Act, and with section 5(e) of the FDI Act concerning cross-guarantees of sister insured depository institutions. Any such consolidated capital requirements or cross-guarantee provisions shall not in any way affect or impair the SEC's financial responsibility or net capital requirements for registered broker-dealers.

The Board is also required to provide timely notice to the SEC before any holding company is required to divest any interest in, or terminate any activities of, a company that is required to register with the SEC as, a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. It is intended that sufficient notice be given to the SEC so that any such divestiture is done in an orderly manner without harming customers of the affiliate, and subject to the Securities Investor Protection Act and the federal securities laws. Similar timely notice is required in connection with any action pursuant to paragraph (2) of subsection (m) with respect to any other functional regulator where the company is subject to any financial responsibility or capital requirements.

Under section 4(n)(1)(A), insured depository institutions and their subsidiaries that are controlled by a financial services holding company are prohibited from offering customers advice or opinions on the products of the securities affiliates unless the insured depository institution or its subsidiary has provided a one-time written disclosure that the securities affiliate is affiliated with the insured depository institution and that the securities affiliate is not an insured institution and that its products are not insured deposits and are not guaranteed by the affiliated insured institution. The Board is instructed to prescribe regulations regarding such notice, in consultation with the SEC.

Under section 4(n)(1)(B), whenever an insured depository institution, its securities affiliate, or any other affiliate of any such institution makes the required disclosures, it must obtain a signed acknowledgement of receipt from the customer, unless the customer would qualify as an "accredited investor" as defined in section 2(15) of the Securities Act of 1933. An insured depository institution or its securities affiliate must obtain acknowledgement of receipt from such an accredited investor only at the time an account is opened.

Section 4(n)(1)(C) generally prohibits disclosures of confidential customer information by any insured depository institution subsidiary of a financial services holding company. Under some State laws, a separate affiliate is not required to sell insurance. In that case, the restrictions would apply within the insured depository institution itself. This provision also requires records be kept of customer consent by an insured depository institution. The provision further specifies that customer consent not only be acknowledged but "maintained" and should include date of acknowledgment, customer's name, address, and account number. Lastly, any renewal of an account or any rollover of a deposit is treated as a new deposit relationship with an insured depository institution for the purpose of availing existing customers (of such institution) of the consumer protections against disclosure in this subsection.

Section 4(n)(1)(D), "confidential customer information" means financial information regarding any specific individual which has been derived from any record of any insured depository institution and pertains to the individual's relationship with the institution.

Section 4(n)(1)(E) contains various exceptions to the definition of "confidential customer information". Any reference throughout this section to any information "obtainable" is intended to be in the "ordinary course of business" and not by any other means.

Section 4(n)(1)(F) provides that the Board may prescribe additional regulations to limit disclosure of nonpublic customer information between an insured depository institution and its subsidiaries and affiliates (including a creditworthiness evaluation of an issuer or other customer of the insured depository institution, its financial or insurance affiliate, or other subsidiary). "Affiliate" includes a separately identifiable department or division of an insured depository institution that is registered as an investment adviser.

Section 4(n)(2) provides that the insured bank or its affiliate must obtain from any customer prior to the sale or acceptance of any noninsured instrument, financial product or deposit a written receipt of a declaration in 18-point bold-type acknowledging that the product is not insured or guaranteed by the United States and that the customer could lose some or all of his or her money.

An exception to this section is provided for transactions by a broker or dealer registered under the Securities Exchange Act of 1934. Brokers and dealers are otherwise subject to customer disclosure requirements under the federal securities laws.

In addition, insurance activities of an affiliate of an insured depository institution that are (1) not conducted on the premises, (2) not part of any joint marketing, or (3) do not in any way involve an insured depository institution are exempt from the customer disclosure requirements in this section. The rationale here is that insurance activities not connected to an insured depository institution are not likely to lead to customer confusion about the Federally insured status of insurance products. An example would be an insurance company that owns a nonbank bank which is an insured depository institution. The disclosure requirements in this section are not intended to apply to insurance activities totally disassociated from the nonbank bank.

The amendment also clarifies that the customer disclosure requirements of this section are not intended when an insured depository institution makes a loan or an extension of credit. However, to the extent a loan or extension of credit is combined or marketed with an insurance product, then the customer disclosure requirements in this section are applicable to the insurance product.

New section 4(n)(3) requires the appropriate federal banking agencies to prescribe regulations jointly to prohibit any insured depository institution from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of an affiliate, stands behind the affiliate's credit, guarantees any return on securities or insurance products sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. It is not intended that such regulations prohibit a securities affiliate from imparting accurate information about securities for which the Federal Government is a source of payment or on which it guarantees any returns.

This advertisement limitation is in addition to certain certifications of understanding that the customers must sign when a purchase is made on the floor of an insured depository institution, as well as when the customer opens an account at the securities affiliate. Notwithstanding such customer certification, there may still be instances in which the inclusion of the logo, name, slogans, and similar information of the securities affiliates may be considered as misleading if it is presented in a way that causes a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of a securities affiliate of the institution, stands behind the affiliate's credit, guarantees any returns on securities sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. With respect to registered investment companies, however, section 466 would prohibit an investment company that has as investment adviser or distributor an insured depository institution from adopting, as part of its name, title, or logo, any word or design that is the same or similar to the name of the insured depository institution.

REQUIREMENTS APPLICABLE IN THE CASE OF FINANCIAL SERVICES HOLDING COMPANIES WITH SECURITIES AFFILIATES

New section 4(n)(4) places restrictions on transactions between insured depository institution subsidiaries of a financial services holding company and the securities affiliate. These so-called "firewall" provisions are designed to prohibit unsound banking practices, risk of loss to the bank insurance fund and the extended safety net, conflicts of interest, unfair competition, undue concentration of resources or decreased competition, and related concerns that would negatively impact the banking system and the securities markets, and the stability of and confidence in both.

Section 4(n)(4)(A)—Certain Financial Transactions of Insured Depository Institutions Prohibited—Section 4(n)(4)(A) provides that, notwithstanding any provision of subparagraph (E), no insured depository institution subsidiary of a financial services holding company may directly or indirectly engage in any of the following with respect to its securities affiliate:

(i) Except as provided in subparagraph (C), extend credit to such securities affiliate, with an exception provided in subparagraph (C) for extensions of credit made in the course of clearing U.S. Government or agency securities where such extensions of credit are repaid on the same or the next calendar day, are incidental to the clearing of transactions in those securities, and are fully secured in both principal and interest by such securities.

(ii) Issue a guaranty, acceptance, or letter of credit, endorsement, asset purchase agree-

ment, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of such securities affiliate.

(iii) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any financial asset of such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

(iv) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group, or which such securities affiliate otherwise places, until (I) in the case of an underwriting, 60 days after completion of the underwriting period or (II) in the case of a placement, 60 days after the completion of the placement.

(v) Purchase for a customer account in which the insured depository institution or its subsidiary, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group or which such securities affiliate otherwise places (whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity, unless such purchase is permitted by state law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses [in accordance with regulations prescribed by the Board] any conflict of interest that an insured depository institution may have in making such purchases) until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after completion of the placement.

Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

This provision does not authorize boilerplate endorsements, contracts of adhesion or lack of informed consent. State trust law supports the requirement of disclosure and informed consent of the trust beneficiary. Generally applicable principles of state trust law demand that a trustee avoid any dealings that may pose a conflict between the interests of the beneficiaries and the trustee's own self-interest. *See Scott* Sec. 170; 76 Am. Jur. 2d Trusts Sections 317, 318; *see also* 10 Am. Jur. 2d Banks Section 307.

(vi) Extend credit to any investment company which is sponsored, organized, controlled, promoted, or advised by such securities affiliate or the depository institution (including a separately identifiable department or division thereof) or any subsidiary of such institution, except as permitted by regulations prescribed by the SEC pursuant to section 18(f)(3) of the Investment Company Act of 1940.

(vii) Extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit to an issuer of securities of which such securities affiliate is underwriting or placing any security for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities.

(viii) Extend credit to a customer of a securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by the securities affiliate.

(ix) Except as provided in subparagraph (G), extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of the issuer of any security of which such securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after the end of the placement.

(x) Except as provided in subparagraph (F), sell any financial asset of the depository institution or a subsidiary thereof to such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

Section 4(n)(4)(B)—Certain Financial Transactions of Holding Companies and Subsidiaries During Distributions Prohibited—Section 4(n)(4)(B) prohibits a financial services holding company and a subsidiary of a financial services holding company (other than a securities affiliate) from, directly or indirectly, extending credit or arranging for the extension of credit to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such financial services holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or unit investment trust or securities of the United States or any agency of the United States or securities on which principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

This paragraph excepts out securities issued by an open-end investment company or a unit investment trust because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

It is intended that the covered entities will take appropriate action to institute, maintain, and enforce reasonable and proper systems of supervision, surveillance and internal control to protect against violations of this provision. For example, most firms use restricted list procedures when a deal is about to go public. It is not intended that an inadvertent error would be actionable, but a pattern of such violations would establish the failure to maintain an appropriate system.

Section 4(n)(4)(C)—Exception for Intra-Day Extensions of Credit in Connection with Clearing Government Securities—Section 4(n)(4)(C) provides an exception from the general prohibition on extensions of credit included in section 4(n)(4)(A). Extensions of credit made in the course of clearing U.S. Government or agency securities are permissible if such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured by such securities. While clearing credit is to be repaid on the same calendar day, the creditors' customers may have been unable to deliver securities to their customers because a portion of the securities expected were not delivered in a timely fashion. The impact of a delivery failure, or a computer or other funding or delivery difficulty may cause clearing credit "to be repaid on the same calendar day" to be delayed for a day or so. Such delays are intended to be permitted under this provision.

Section 4(n)(4)(D)—Prohibitions on Discriminatory Credit Treatment—Section 4(n)(4)(D) stipulates that depository institutions that choose to offer credit, including credit for clearing services for government securities to unaffiliated financial institutions, must not discriminate in the terms and conditions under which this service is provided vis-a-vis those made available to their own financial affiliates or to their own securities department or subsidiaries, unless based on objective criteria and sound business practices. This section requires that the Federal Reserve Board monitor the availability, cost, and conditions of such credit for clearing services to securities firms not affiliated with depository institutions. Should the Board determine that this service is becoming unavailable, or available under conditions that do not permit unaffiliated securities firms to compete effectively in the government securities market, section 4(n)(4)(D)(iii) requires the Board to promulgate rules designed to cure the situation, for example, by requiring depository institutions to offer such services under improved conditions and prices to unaffiliated firms, by providing such firms direct access to Reserve Bank clearing, or by making proposals to the Congress for remedial legislative changes.

Section 4(n)(4)(E)—Review of Intraholding Company Transfers—Section 4(n)(4)(E) prohibits a financial services holding company and, subject to subparagraph (A), a subsidiary of a financial services holding company (other than a securities affiliate) from extending credit (not otherwise prohibited under this Act) to, transferring financial assets to, or making an equity investment in, any securities affiliate without prior notice to the Board in accordance with regulations prescribed by the Board. The Board may prohibit any such transaction if the Board determines that such transaction would affect the financial resources of the financial services holding company to such an extent that the transaction would be likely to impair or diminish significantly the ability of the financial services holding company to take any action necessary to comply with the capital requirements applicable to each of its insured depository institution subsidiaries. Notwithstanding any other provision of law, no insured depository institution may make an equity investment in its related securities affiliate.

Section 4(n)(4)(F)—Asset Purchases From Affiliated Bank, Insured Institution, Or Subsidiary Thereof—Section 4(n)(4)(F) permits an insured depository institution, notwithstanding subparagraph (A)(x) of Section 4(n)(4), but subject to section 23B of the Fed-

eral Reserve Act, to sell any asset of such insured depository institution or subsidiary thereof for the purpose of including such assets in a pool of assets for the purpose of issuing asset-backed securities if:

(I) those securities are rated as investment grade by at least one unaffiliated, nationally recognized statistical rating organization;

(II) those securities are issued or guaranteed by a government sponsored enterprise which the Board has determined by regulation to be permissible for purposes of this exception;

(III) those securities represent interests in securities described in subclause (II) above;

(IV) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in preparing the registration statement and prospectus, offering circular, or similar document; or

(V) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

The Board, after consultation with the SEC, shall prescribe regulations to ensure compliance with these requirements. The above-listed exceptions to subparagraph (A)(x) of section 4(n)(4) are intended largely to parallel NASD Schedule E, which addresses asset sales to affiliated entities for underwriting purposes.

Section 4(n)(4)(G)—Exceptions to Credit Facility Limitations—Section 4(n)(4)(G) would provide three exceptions to the prohibitions of section 4(n)(4)(A)(ix). The first exception in subparagraph (G) would be available for a credit facility that was entered into at least 60 days before the commencement of the underwriting or placement, unless such credit arrangement had been entered into in anticipation of such underwriting or placement. It is intended that credit facilities entered into before that 60 days still be subject to applicable arm's length requirements.

The second exception would be available if the credit facility is a renewal or extension, on the same or substantially the same terms and conditions, of a credit facility entered into by the institution with the same issuer at least 2 years before the beginning of such 60-day period, provided that the securities affiliate is not a "significant participant in the underwriting or placement," as defined by the SEC. It is intended that an extension or renewal of a credit facility shall not be deemed to be on "the same or substantially the same terms and conditions" if the interest rate or rates, the collateral, the maturity, or any other relevant term or condition is more favorable to the borrower or beneficiary than prevailing market conditions at the time of such extension or renewal if the same credit facility was being provided de novo by an unaffiliated, objective third party lender. Terms and conditions should differ only to the extent necessary to conform to market conditions at the time of the renewal or extension.

Further, the term "significant participant in the underwriting or placement" shall be defined in relation to such factors as the affiliate's percentage participation in the underwriting or placement in comparison to other participants and its management responsibilities for the underwriting or placement. Because there are circumstances in which less or sometimes substantially less than a majority interest or participation can nonetheless render a securities affiliate a "significant participant in the underwriting or placement", more precise definition of this term has been left to the SEC. This concept of a "significant participant in the underwriting or placement" is relevant as well to the provisions in subclause (IV) of clause (iii).

The third exception would be available for credit facilities that (1) comply with Board regulations reasonably designed to prevent unfair or coercive practices and subsidies, (2) meet certain conditions designed to ensure that the extension of credit is arm's length and does not provide any prohibited subsidy to the issuer, and (3) comply with clauses (iv) through (vi) of subparagraph (G).

Although the third exception is conditioned on compliance with clauses (iv) through (vi) of subparagraph (G), those clauses apply with respect to any excepted credit facility. Clause (iv) requires the board of directors of the financial services holding company to establish policies and procedures to ensure that the insured depository institution is aware when the credit facility would fall within the subparagraph (A)(ix) proscription. Clause (v) requires the insured depository institution and securities affiliate to maintain certain segregated records and file certain reports with the Board and the SEC concerning their compliance with the requirements of subparagraph (G). The arm's length demonstration to be supported by the records does not require documentation that a covered transaction was identical to another transaction with a borrower that was not an issuer. Clause (vi) requires the boards of the financial services holding company and the insured depository institution to (1) review annually the procedures of the holding company for compliance with the conditions of subparagraph (G), (2) determine quarterly that all significant credit facilities entered into by the insured depository institution which are made in reliance on the second exception were effected in compliance with such exception, and (3) promptly notify the Board and the SEC of any transaction that is not in compliance with the conditions of subparagraph (G).

The Board is authorized, in consultation with the SEC, to make such regulations as may be necessary or appropriate to implement the provisions of subparagraph (G) and to define the terms used therein. With respect to any Board rulemaking under this subparagraph, if the SEC comments in writing on a proposed regulation of the Board that has been published for comment under this subparagraph, the Board must respond in writing to the SEC's written comment before adopting such regulation. The Board must, at the request of the SEC, publish such comment and response in the Federal Register at the time of publishing the adopted regulation.

The Board's authority to define the terms used in this provision is vital to its implementation. In particular, the Board is authorized to define the terms "senior management," "executive management," "significant credit facility," and "significant participant in a credit facility." It is intended that the term "senior management" be defined to ensure that the approvals that must be made by senior management are made at an appropriately high level. Although senior managers need not be senior executives of an institution, they should not be loan officers.

The term "executive management" is intended to refer to a higher level within an institution's management. The category of executive management should be limited to executive officers, such as the institution's president, those vice presidents in charge of a principal business unit, division, or function, or those officers with a significant policy-making function. The term "executive management" should not include individuals who, although denominated "vice president", "senior vice president", or the like, do not have significant supervisory or policy-making responsibilities.

The term "significant credit facility" shall be defined with reference to such factors as the principal amount of the facility in absolute terms, the size of the facility in relation to the insured depository institution's capital and lending limits, and the size of the facility in relation to the institution's other outstanding loans. The Board could also take into account whether the credit facility was related to the underwriting. The term "significant participant in a credit facility" should be defined according to the relative participation of an insured depository institution in a credit facility, as measured by such factors as the percentage participation of the institution in comparison to other participants and the management responsibilities of the institution over the facility.

The terms "significant participant in a credit facility" and "significant participant in the underwriting or placement" trigger the certification required of the affiliate and the issuer under subclause (IV) of clause (iii). This certification will always be required where the insured depository institution is the lead bank on a covered credit facility and its securities affiliate is a co-manager of a covered transaction.

The purpose of section 4(n)(4)(A)(ix) is to remove a conflict of interest that could lead an insured depository institution either to assume large credit risks or to impose a tying arrangement on borrowers for the benefit of its securities affiliate. This conflict arises from the availability of insured deposits to support the underwriting activities of the securities affiliate. A depository institution could condition the availability of credit on the borrower's use of the securities affiliate.

Alternatively, a depository institution could assume greater risks in order to induce borrowers to use the securities affiliate. One very common problem during the 1980s was the granting of often highly imprudent loans by savings and loan associations to commercial real estate developers motivated by the ability to take into income immediately the loan origination fees (or "points") paid by the borrower. Using the immediate booking of fees, institutions could boost their net income and pay it out as salaries or dividends. Of course, the association was left saddled with a loan that might never be repaid, but that problem would not manifest itself until long after the fee income had been obtained.

This provision is designed to provide a simple and enforceable protection against a bank making an imprudent loan in order to obtain underwriting business for its securities affiliate. Like the S & L loan points, underwriting fees can be taken into income immediately. Therefore, a holding company would have an inducement to seek to obtain underwriting business and fees by offering an issuer choosing among competing underwriters a loan in either an otherwise unavailable amount or at a concessionary interest rate.

In either case, the decision to extend credit would not be objectively made and would present unacceptable risks to the taxpayer. The provision thus protects the taxpayer by ensuring that the institution's credit judg-

ment takes priority over its interest in assisting the securities affiliate.

Under this provision, the Board will adopt rules designed to ensure that institutions that make credit extensions during the window surrounding and including the underwriting or placement neither use the availability of credit to subsidize their securities affiliates nor coerce potential borrowers into using the underwriting services of a securities affiliate. These rules shall be consistent with the essential purposes of the provision, which is the separation of the lending and underwriting activities of insured depository institutions and their securities affiliates and the protection of the federal safety net and institution borrowers from illegitimate practices that benefit the securities affiliate. Implementation of this provision and the Board's rules thereunder will be assured through the exercise of the examination and enforcement authority of the Board and the SEC.

The phrase "coercive or unfair practices" in clause (ii) is intended to include the express tying of credit facilities by an insured depository institution to investment banking services provided by affiliates. "Coercive or unfair practices" also include any conflict that would violate Section 5 of the Federal Trade Commission Act or comparable statutes barring unfair competitive activities. For example, any communication that might reasonably be construed as an indication to a borrower (or, by the same token, to an issuer of securities underwritten by a securities affiliate) that the decision by the insured depository institution to provide or continue to provide a credit facility will be influenced by the borrower's (or issuer's) willingness to use the services of the securities affiliate would be a "coercive or unfair practice." Also intended to be captured would be an implicit quid pro quo in the form of an understanding between the parties that the tied purchase would, for example, result in more flexibility on the part of the insured depository institution in servicing the loan.

Similarly, "induce" for purposes of this subparagraph means any act or communication by an insured depository institution where, under the circumstances surrounding such act or communication, it can reasonably be construed as having the potential of affecting the decision of the borrower or issuer to use the services of the insured depository institution's securities affiliate.

The provisions of subparagraph (G) are in addition to the prohibitions contained in Section 23B of the Federal Reserve Act (as amended by Section 433 of this legislation) and Section 106 of the Bank Holding Company Act Amendments of 1970. These laws also address coercion and tying by depository institutions.

Section 4(n)(5)—Prohibition on Reciprocal Arrangements Within the Holding Company—Section 4(n)(5) prohibits any affiliate of a financial services holding company from engaging in any transaction or reciprocal arrangement for the purpose of evading any restriction or limitation imposed with respect to the safeguard provisions of this Act.

This prohibition includes reciprocal as well as nonreciprocal arrangements with affiliates, unaffiliated companies, and customers for the purpose of evading the provisions of the bill.

Section 4(n)(6)—Interlocking Directors, Management Officials, and Employees Prohibited—Section 4(n)(6) prohibits an insured depository institution controlled by a financial services holding company or any subsidiary of any such institution from allowing any director, management official, or employee of such institution or subsidiary to serve at the same time as a director, management official, or employee of any securities affiliate controlled by such holding company. The Board is given the authority to grant exemptions, after consultation with the SEC, from these interlocking restrictions. In making such determinations, the Board shall consider the size of the financial services holding company, insured depository institution and securities affiliate involved; the burdens such restrictions impose; the safety and soundness of the insured depository institution and securities affiliate; and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information.

This provision contains two exceptions: (1) for certain small financial services holding companies and (2) for certain back office operations. The Board shall grant, by regulation, an exemption with respect to interlocks with respect to holding companies whose total banking assets do not exceed $500,000,000. Further, the prohibitions under subparagraph (A) of section 4(n)(6) do not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions if such functions are performed in a separate office or facility that is not open to the general public and in a manner consistent with the requirements determined by the Board after consultation with the SEC.

The term "management official" includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

Section 4(n)(7)—Prohibition on Favoring Captive Agents— Section 4(n)(7) states that an insured depository institution subsidiary of a financial services holding company may not (i) require that a customer use a particular insurance agent, (ii) solicit sale of insurance that is required under any loan unless the customer has been advised in writing of antitying provisions, (iii) solicit any insurance products required on any loan or extension of credit unless the customer has received a written commitment regarding the loan or credit, (iv) reject insurance contracts solely because such policy was issued or underwritten by any person not an affiliate of such subsidiary, (v) unless otherwise authorized by law, impose a separate charge in connection with a contract that requires insurance, or (vi) engage in other activities favoring an affiliated insurance agent. Insurance is defined for purposes of paragraph (7). Also, subparagraph (iii) is not intended to preclude a bank from requiring insurance for the collateral for a loan.

Section 4(n)(8)—Authority To Modify and Impose Additional Safeguards—Section 4(n)(8) permits the Board, in order to preserve the safety and soundness of insured depository institution subsidiaries of financial services holding companies, and to ensure that the activities of any financial services holding company and any subsidiary of any such company (other than an insured depository institution subsidiary) are conducted without the support of insured depository institution affiliates, to

(i) by regulation or order, adopt additional limitations or restrictions on any extension of credit or financial assistance or any transaction which has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, any affiliate of such institution which is engaged in any new financial activity or any customer of such affiliate; and

(ii) after consulting with and considering the views of the SEC, modify by regulation any limitation on the activities of financial services holding companies and their affiliates contained in this subsection.

Paragraph (B) of section 4(n)(8) establishes standards governing the exercise of authority under paragraph (A) of section 4(n)(8). Specifically, any authority under subparagraph (A)(i), with respect to additional limitations or restrictions, is to be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, and unsafe banking practices.

Any authority under subparagraph (A)(ii) to modify any limitation on activities contained in this section shall be exercised only if the Board, after consulting with and considering the views of the SEC, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, or undue risks to the Federal deposit insurance funds.

It is intended that the authority under this subparagraph (A)(ii) not be exercised in such a way as to undermine, directly or indirectly, in whole or in part, the intent of the firewalls and the investor, depositor, taxpayer and other safeguards contained in section 4(n). It is also expected that the Board and the SEC will be responsive to one another's views and will act pursuant to this paragraph in a coordinated fashion. Because of the mirror-image safeguards established by this Act that are to be enforced by the SEC and the Board with respect to the securities affiliate and the insured depository institution, respectively, unilateral or inconsistent action by either agency will have the practical effect of negating modification of any limitation made pursuant to this paragraph.

Section 4(n)(9)—Divestiture for Continuing Course of Misconduct Affiliated With Securities Affiliate—Section 4(n)(9) provides the Board with the authority to require a financial services holding company which controls a securities affiliate to divest either its securities affiliate or the insured depository institution, at the option of the holding company, where the holding company or any of its subsidiaries has engaged in a continuing course of conduct involving violations of the securities activities and firewall provisions contained in section 4(n), or regulations prescribed or orders issued thereunder by the Board. This section also provides for notice, an administrative hearing, and adjudicatory procedures for requiring such divestiture. In carrying out this section, the Board shall consult with and provide timely notice to the SEC. As noted above, any divestiture of a securities affiliate must be affected pursuant to SIPA and the federal securities laws.

Section 4(o)—Exception for Certain Nonbanking Investments—Section 4(o)(1) permits a holding company to own or control voting shares of a company engaged in ac-

tivities that are not permitted for financial services holding companies in two circumstances. Subparagraph (A) is amended to provide that: the shares must have been acquired before September 30, 1991; the company on such date was an affiliate of an entity that is registered with the SEC as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser; and the aggregate investment in all such shares does not exceed 5 percent of the financial services holding company's capital and surplus on a consolidated basis.

Section 403(b) makes conforming amendments to section 4 of the Bank Holding Company Act including replacing references to "bank holding company" and "bank" with references to "financial services holding company" and "insured depository institution."

Section 403(c) sets forth a rule of construction relating to the removal of section 4(c)(8)(A) through (G) to section 4(i)(5) of the Bank Holding Company Act. The rule states that the amendments shall not be construed as making any substantive change in the meaning of former subparagraphs (A) through (G) of section 4(c)(8) and that any regulations or orders under or interpretations of such subparagraphs shall remain in effect on and after the date of enactment of the Financial Institutions Safety and Consumer Choice Act.

Sec. 404. Registration and Enforcement

Section 404 amends the Bank Holding Company Act to create a new section 5.

Under new section 5, the Board continues to function as the umbrella supervisor of the financial services holding company and its subsidiaries. In such capacity, the Board shall oversee the activities of the holding company and all its subsidiaries and affiliates to ensure the soundness of the holding company and to protect its insured depository institution. Notwithstanding the language in subsection (d) of section 404 permitting the Board to conduct on-site examinations of any subsidiary of a financial services holding company, the SEC remains the primary regulator, supervisor and examiner of any securities firm, including those in a holding company, pursuant to its authority under the federal securities laws. The bill specifically requires consultation between the Board and the SEC, use of SEC exams to the extent possible, and reciprocal notice before any examination commences of a securities firm regulated by the SEC. The bill also authorizes the SEC to accompany the Board on any examination of an SEC-registered entity.[2] The Board is generally expected to use the FOCUS and other reports regarding securities firms made by the SEC and the self-regulatory organizations. The SEC remains the primary regulator of all securities firms. As indicated above, the Board's authority with respect to covered securities firms is limited to ensuring the financial strength of the holding company consistent with the purposes of the Bank Holding Company Act.

Section 5(a) requires that a financial services holding company must register with the Board within 180 days of becoming a financial services holding company. Registration shall be documented on forms prescribed by the Board, which shall include information concerning the financial condition and operations, management, and inter-company relationships of the registrant and its affiliates, as well as any additional information deemed appropriate by the Board. Under subsection (a)(2), the regulators retain the discretion to extend the registration period beyond 180 days.

Section 5(b) authorizes the Board to prescribe such regulations and issue such orders as may be necessary to enable the Board to administer and carry out the purposes of the Bank Holding Company Act and prevent evasions thereof. Subsection (b)(2) requires the initial regulations implementing section 5 after the enactment of H.R. 6 to be proposed and prescribed by the Board and published in final form before January 1, 1993.

Section 5(c) sets forth the recordkeeping and reporting requirements that may be imposed by the Board on a financial services holding company.

Subsection (c)(1)(A) provides that the Board may require a financial services holding company and its insured depository institution subsidiaries to file reports under oath with the Board to keep the Board informed as to compliance with the provisions of the Bank Holding Company Act and regulations prescribed and orders issued thereunder. Subsection (c)(1)(B) provides that, for insured depository institution subsidiaries for which the primary regulator is not the Board, the Board is required to consult with and, to the extent possible, use reports obtained by any other appropriate Federal banking agency.

Subsection (c)(2)(A) provides that the Board may require any financial services holding company and any subsidiary thereof (other than an insured depository institution) to file reports with the Board if the Board reasonably believes that the activities or financial condition of such companies are likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary of the company (or any subsidiary of the institution). It is not intended that the Board determine in advance that all affiliates of an insured depository are likely to have a material impact on the financial or operational condition of an affiliated depository institution. In promulgating rules or otherwise interpreting "material affiliates" under this subsection, the Board may find it useful to consider factors similar to those set forth in the SEC's proposed risk assessment rules regarding "material associated persons" subject to such rules.[3] As noted above, the Board should use existing reports filed with other functional regulators for this purpose whenever possible. In addition, any such reports should not be onerous in nature.

Subsection (c)(2)(B) provides that, where such material affiliates also have another functional regulator, the Board is required to consult with and, to the extent possible, use reports obtained by any such functional regulator. In the case of a subsidiary which is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board must comply with paragraph (5).

Subsection (c)(3)(A) provides for reciprocal access to reports, other than examination reports, between the Board and any functional regulator of any financial affiliate which is not a subsidiary of a financial services holding company, if the other functional regulator reasonably believes that the activities or financial condition of an insured depository institution or financial services holding company is likely to have a material impact on the condition of the financial affiliate. Subsection (c)(3)(B) provides for reciprocal access to reports, other than examination reports, between the Board and any other appropriate Federal banking agency for an insured depository institution of any affiliate of the insured depository institution, if such agency believes that the activities or financial condition of such affiliate is likely to have a material impact on the insured depository institution. The provisos excepting examination reports are not intended to preclude the sharing of examination reports by regulators on a case-by-case basis, as is currently done.

Subsection (c)(4) requires the Board and the SEC to adopt procedures to coordinate and provide for the cooperative exchange of information and reports regarding entities under their respective jurisdictions as may be necessary to carry out their regulatory responsibilities under the Bank Holding Company Act and the federal securities laws. By January 1, 1993, the Board and the SEC are required to report to Congress regarding the procedures adopted to carry out such information coordination.

Subsection (c)(5) authorizes the Board to ask the SEC to provide such information as may be reasonably necessary for the Board to conduct its supervisory responsibilities regarding an affiliate that is registered with the SEC as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. Such requests are intended to supple-

[2] Section 17(b) of the Securities Exchange Act of 1934 provides that all records of every member of a national securities exchange, broker or dealer who transacts a business in securities through the medium of any such member, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the SEC and the appropriate regulatory agency for such persons as the SEC or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[3] Section 17(h) of the Securities Exchange Act of 1934, which was adopted as part of the Market Reform Act of 1990, provides for new recordkeeping and reporting obligations for broker-dealers that are members of holding company systems. These risk-assessment provisions permit the SEC to assess the risks that holding company system units pose to broker-dealers. The SEC authorized to require registered broker-dealers to (1) obtain such information, (2) make and keep such records, and (3) provide summary reports of such information to the SEC, concerning: (a) policies, procedures or systems for monitoring and controlling financial and operations risks, resulting from (b) financial and securities activities conducted by, and the customary sources of capital and funding of, (c) those associated persons whose business activities are reasonably likely in any particular case to have a material impact on the financial or operational condition of the registered broker-dealer.

Pursuant to this authority, the SEC has recently proposed temporary recordkeeping and reporting requirements. Proposed rule 17h-1T would require a broker-dealer to maintain and preserve certain information concerning each "material associated person" of the broker-dealer. Whether an associated person of a broker-dealer should be designated as a material associated person, thereby triggering the risk-assessment obligations, will depend on the fact and circumstances.

For guidance in determining materiality, proposed rule 17h-1T(a)(3) attributes relevance to the following factors: (1) nature and proximity of the relationship between the broker-dealer and the associated person; (2) overall funding needs of the broker-dealer and financial dependence on the associated person; (3) reliance by the broker-dealer or its customers on the associated person for operational support or services; (4) level of risk in activities of the broker-dealer or the associated person; and (5) ability of the associated person to cause withdrawal of capital from the broker-dealer.

ment the Board's information-gathering authorities during an emergency or other extraordinary situation. The Board should not request additional routine information that it ordinarily should obtain through the use of FOCUS or other existing reports that it obtains pursuant to subsection (c)(2)(A). In response to such a request from the Board, the SEC must use reasonable diligence to provide promptly to the Board such of the requested information regarding such SEC-registered affiliate as the SEC has available. If the Board needs additional information regarding such affiliate, it may then request that the SEC obtain such information, through examinations or otherwise. In response to a request from the Board for such additional information, the SEC must use reasonable diligence to obtain such information, including, if necessary, by conducting an examination of the affiliate, and must promptly provide to the Board such of the requested information as it has obtained. The Board may obtain such information from the SEC-registered affiliate directly only if the SEC does not comply with the Board's request. "Promptly" and "reasonable diligence" will vary according to the particular facts and circumstances and the nature and amount of information being sought.

Subsection (c)(6) provides that any reports obtained from the Board, any appropriate Federal banking agency, or other functional regulator under this subsection may not be disclosed to the public by the recipient agency or other regulator and may not be disclosed to any other governmental agency except as otherwise permitted by law. Reports obtained under this subsection may be used only to carry out the purposes of this subsection or as otherwise permitted by law. It is intended that Congress be specifically excluded from the restriction so that its oversight and investigations function is not impaired.

Section 5(d)(1) provides general authority for the Board to conduct examinations, including on-site examinations, of any financial services holding company, any insured depository institution subsidiary of such holding company, any subsidiary of such insured depository institution, and any other subsidiary of such financial services holding company. The Board shall consult with and, to the extent possible, use the report of examination made by any other appropriate Federal banking agency, the appropriate State bank supervisor, or any other functional regulator. The cost of examinations of a financial services holding company and any subsidiary thereof shall be assessed against, and paid by, the financial services holding company. Before beginning any examination of any broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board must notify the SEC of the examination and the SEC may accompany the Board and conduct its own examination.

Paragraph (2)(A) authorizes the SEC and each firewall examining authority to conduct examinations, including on-site examinations, for the purpose of determining compliance with the firewall provisions. Paragraph (2)(B) requires the Board and the SEC, to the maximum extent possible, to coordinate conduct of such examinations in order to avoid unnecessary regulatory duplication and undue regulatory burdens. In coordinating firewall examinations, the Board and the SEC shall establish procedures for the sharing and use of information, shall specify the minimum scope and frequency of such examinations, and shall establish such additional procedures as the Board and the SEC believe will facilitate the administration and enforcement of the firewall provisions. Ordinarily, a securities affiliate that is registered with the SEC shall be examined once each year and a financial services holding company, each insured depository institution subsidiary thereof, and each subsidiary of such insured depository institution shall be examined at least once during each 12-month period (beginning on the date on which the most recent examination of such company or subsidiary ended) for purposes of determining compliance with the firewall provisions.

Paragraph (2)(C) requires each general examining authority to cooperate with each firewall examining authority to the maximum extent practicable with respect to the sharing and use of information and conducting examinations. Paragraph (2)(D) requires each firewall examining authority to provide timely notice, whenever it intends to conduct an examination of an entity for firewall compliance purposes, to each general examining authority for such entity. Any such general examining authority may accompany the firewall examining authority and participate in such examination. When appropriate, the firewall examining authority shall consult with, and to the extent possible, use the report of examination made by the general examining authority, any appropriate State bank supervisor, any State securities commission, or any other functional regulator. The cost of any covered examinations shall be assessed against, and paid by, the affiliate for which the firewall examining authority is the general examining authority.

Paragraph (3) requires general examining authorities and firewall examining authorities promptly to inform each other of the results of any examination concerning compliance with the firewall provisions. Paragraph (4) contains the definitions relevant to examination authority.

Section 5(f) provides the Board with additional enforcement authority.

Pursuant to section 5(f)(1), in addition to any other authority of the Board, the Board may take any action described in paragraph (2) if the Board has reasonable cause to believe that any financial services holding company, or any subsidiary of a financial services holding company (other than an insured depository institution), is engaged in activities in such a manner as to constitute a serious risk to the financial safety, soundness, or stability of any insured depository institution affiliate. Congress expects the Board to adopt regulations specifically defining such activities so that entities have notice of activities that are subject to the Board's enforcement authority under this section.

Paragraph (2) authorizes the Board to institute cease and desist proceedings or to issue a temporary order against any covered entity that is engaged in qualified financial activities and that is not a registered broker or dealer affiliate to (i) cease and desist from engaging in the activity in question and (ii) take affirmative action to prevent significant dissipation of assets or earnings of an insured depository institution affiliate. The Board may also require any financial services holding company to increase its capital, however, any such action may not impact the capital or other financial responsibility requirements of other functional regulators.

If any company described in paragraph (1) fails to comply with any order discussed above, the Board may order the company to divest itself of either (I) the insured depository institution or (II) the offending nonbank affiliate within 120 days. Due notice and an opportunity for a hearing must be provided prior to any order to divest. If the Board makes the finding described in paragraph (1) with respect to a registered broker or dealer or government securities broker or dealer affiliate, the Board (after due notice and opportunity for a hearing and after considering the views of the SEC) may order the holding company to terminate the ownership or control of such broker or dealer in the same time periods and by the same methods. A holding company may divest by selling the affiliate to a third party or by a pro rata distribution of the shares of the affiliate to all of the shareholders of the distributing holding company. Any divestiture or liquidation of a securities affiliate shall, of course, be effected pursuant to the requirements of the Securities Investor Protection Act and the federal securities laws.

The Board may enforce any order issued under this subsection in the United States District Court within the jurisdiction of which the principal office of the holding company is located.

Section 5(g) generally requires the Board and the SEC to use reasonable efforts to coordinate enforcement proceedings for violations of the firewall provisions and requires each agency to file with the other agency notices before the commencement of any proceeding and a copy of any order entered after such proceeding. The Board and the SEC shall each inform the other of any violation or suspected violation of the requirements of section 4(n) of the Bank Holding Company Act and section 15D of the Exchange Act, and may recommend such enforcement action with respect to such violation as each determines to be appropriate.

Effective enforcement of the firewalls will require the close cooperation of the Board and the SEC, and section 5(g) is intended to provide a mechanism for this cooperation. Nevertheless, the effective enforcement of the firewall provisions also requires that the authority of each agency to enforce those firewalls with respect to entities within its jurisdiction remain unimpaired so that there are no gaps that can be exploited by would-be malefactors. Section 5(g)(2) makes clear that the allocation of firewall enforcement responsibility in section 5(g) does not in any way infringe on the current authority of the SEC under the federal securities laws to examine entities registered with it or to conduct investigations of possible violations of law. The provision preserves the existing authority of the SEC to bring a civil action seeking an injunction, a civil money penalty, or other relief against any person who violates the federal securities laws, either directly or as an aider and abettor, and to bring an administrative proceeding, such as those under sections 15(b)(4) and 15(b)(6) of the Exchange Act, where appropriate. The provision likewise preserves the existing authority of the Board under the Bank Holding Company Act. Preservation of these authorities will be essential to meaningful cooperation between the agencies and the effective enforcement of sections 4(n) and 15D.

Sec. 405. Reservation of Rights to States; Preemption of Anti-Affiliation Provisions

Section 405 amends section 7 of the Bank Holding Company Act to continue the current law's existing requirement that the Act not be construed so as to diminish the existing or future powers and jurisdiction of any State regarding companies, banks, financial

services holding companies, and any of their subsidiaries.

Subsection 7(b) creates three exemptions from the reservation of rights to the States. First, no State law shall prevent or impede any insured depository institution (or any affiliate) from being or becoming a subsidiary or affiliate of a financial services holding company (or affiliate) because of the activities engaged in by either the depository institution (or any affiliate) or the financial services holding company (or any affiliate).

Second, no State law shall prevent or impede any financial services holding company (or any affiliate) from acquiring, owning, controlling, or affiliating with any insured depository institution (or any affiliate) because of the activities engaged in by either the depository institution (or any affiliate) or the financial services holding company (or any affiliate).

Third, no State law may prevent or impede any insured depository institution (or any affiliate) from (I) offering or marketing the products or services, except insurance, of any affiliated financial services holding company (or any affiliate) or (2) having its own products or services offered or marketed by any affiliated financial services holding company (or any affiliate). However, cross marketing of insurance products and services in insured depository institution affiliates is permitted only to the extent such activities are permitted for State banks in the particular State in which the products or services are to be offered.

State laws governing the examination, supervision, or regulation of financial service providers or the protection of consumers are not preempted unless any particular law is inconsistent with the purposes of the Financial Services Holding Company Act (in which case the State law will be preempted only to the extent of the inconsistency).

The provisions of subsection (b) apply to foreign bank branches, agencies, and commercial lending companies as these terms are defined in the IBA.

New section 7(b)(4) provides that, notwithstanding any other provision of this subsection, a State shall not be preempted from enforcing any State law that prohibits any ownership, control, or activity that is prohibited by this Act.

Sec. 406. Penalties

Section 406 amends section 8 of the Bank Holding Company Act by striking the term "profit significantly" and replacing it with the term "obtain anything of value."

In addition, section 8 is amended to allow civil and criminal penalties for violations of the Act to be imposed upon financial services holding companies.

Sec. 407. Conforming Amendments to Section 11

Section 407 makes certain conforming amendments to section 11 to replace references to a "bank holding company" and "bank" with a "financial services holding company" and "insured depository institution," respectively.

Sec. 408. Application of the Limitations on Tying Arrangements and Insider Lending To Financial Services Holding Companies

Section 408 replaces the term "bank holding company" with "financial services holding company" in that portion of the Bank Holding Company Act Amendments of 1970 governing tying arrangements and in that portion of the Federal Reserve Act governing insider loans.

Subsection (b) states the general rule that a financial services holding company and its nonbank subsidiaries may not provide products or services or set or vary the cost of products or services on the condition or requirement that the customer also obtain products or services from an affiliated bank.

Two exceptions to the general prohibition on tying are provided. First, products and services of a bank and an affiliate of a bank may be offered together and the price of the nonbank product may be varied on the condition that the customer purchases a bank product or service if both the bank product and the affiliate's product are separately available to the customer on substantially the same terms.

Second, a financial services holding company and any nonbank subsidiary may vary the price for any loan, discount, deposit or trust service on the condition that the customer obtain a loan, discount, deposit or trust service from an affiliated bank so long as the products or services are separately available.

Sec. 409. Provisions Exempting Financial Services Holding Companies From The Savings and Loan Holding Company Act

Section 409 amends section 10 of the Home Owners' Loan Act to exclude any financial services holding company (and any subsidiary of such holding company) that owns a savings association from the definition of savings and loan holding company and from the provisions of section 10 of the Home Owners' Loan Act. A financial services holding companies described in section 4(f) of the Bank Holding Company Act (companies owning nonbank banks) are not excluded from section 10.

Sec. 410. Cease and Desist Authority

This section amends section 8(b)(3) of the FDI Act to replace the term "bank holding company" with "financial services holding company."

Sec. 411. Effective Date

Generally, the amendments made by Subtitle A of Title IV are effective January 1, 1993. However, the amendments made by sections 408 and 409 shall take effect on the date of enactment.

Chapter 2—Depository Institution Conversions

Sec. 421. Failing Thrift Conversions To SAIF-Insured National Bank

This section amends section 10 of the Home Owners' Loan Act to provide that a national bank that is a member of the SAIF shall, upon application to the Director of the Office of Thrift Supervision ("Director"), be deemed to be a savings association for purposes of section 10 of the Home Owners' Loan Act if it meets certain conditions. Those conditions are either that the bank results from the conversion of, or acquires more than an insignificant portion of the assets of, a savings association which was in danger of default or was under the control or a conservator or receiver. After the conversion or acquisition the bank must be a level 1 or level 2 depository institution, as defined in new section 38 of the FDI Act.

Subsection (b) provides a rule of construction regarding the permissible activities and affiliations of a bank described above.

Sec. 422. QTL-Qualified National Banks Resulting From Conversion of Savings Associations

This section adds a new subsection (t) to section 10 of the Home Owners' Loan Act. The new subsection provides that a national bank which meets the qualified thrift lender test under the Home Owners' Loan Act, resulted from the conversion of a savings association subsidiary of a savings and loan holding company, and meets or exceeds minimum capital requirements shall be treated as a savings association for purposes of section 10. SAIF insured national banks will remain "banks" for purposes of the Bank Holding Company Act, and companies that own or acquire SAIF-insured national banks would be financial services holding companies subject to the provisions of that Act.

Sec. 423. Mergers and Acquisitions of Insured Depository Institutions During Conversion Moratorium

This section amends Section 5(d)(3) of the FDI Act to permit any insured depository institution to engage in certain "merger transactions" (as further described below) with any other insured depository institution.

Permissible transactions must be approved by the "responsible agency," which generally is the FDIC if the resulting entity is a State nonmember insured bank or savings bank, the Office of the Comptroller of the Currency (OCC) if the resulting entity is a national bank, or the Office of Thrift Supervision (OTS) if the resulting entity is a savings association. The Board must also approve a merger transaction if the resulting entity is a Bank Insurance Fund (BIF) member which is a subsidiary of a bank holding company.

Transactions permitted by this section include transactions described in clause (ii) (the merger or consolidation of a BIF member with a SAIF member), (iii) (the assumption of any liability by a BIF member to pay deposits of a SAIF member or vice versa), or (iv) (the transfer of assets of any BIF member to any SAIF member in consideration of the assumption of liabilities for any portion of the deposits of such BIF member or vice versa) of section 5(d)(2)(B) of the FDI Act.

If any resulting depository institution is a BIF member, that portion of the average assessment base of such member attributable to SAIF insurance shall be subject to assessment at the rate applicable under section 7 of the FDI Act for SAIF members. Similarly, in the case of any resulting depository institution which is a SAIF member, that portion of the average assessment base of such member attributable to BIF insurance will be subject to assessments at the assessment rate applicable under section 7 of the FDI Act for BIF members.

The responsible agency and the Board are required to follow the procedures and consider the factors set forth in section 18(c) of the FDI Act when acting upon an application for a merger transaction.

No transaction authorized by this section is intended to permit the transfer of any insured depository institution from one deposit insurance fund to the other deposit insurance fund. No merger transaction may be approved unless the acquiring institution and its holding company are in compliance with applicable capital requirements.

The Board may not approve any transaction under this section which would violate section 3(d) of the Bank Holding Company Act (the Douglas Amendment) regarding restrictions on interstate banking.

Any application by a State nonmember insured bank to acquire another insured depository institution which is required to be filed with the FDIC must be approved or disapproved in writing before the end of the 60-day period beginning on the date such application is filed. This 60-day period may be extended for one additional 30-day period if the FDIC determines that the applicant has failed to furnish all information required to be submitted in connection with an applica-

tion or if any material information that has been submitted is substantially inaccurate or incomplete.

In a situation where any resulting depository institution is later in default or in danger of default, any loss incurred by the FDIC shall be allocated between the BIF and SAIF in amounts reflecting the amounts of insured deposits in such resulting depository institution assessed by BIF and SAIF respectively.

After the expiration of the conversion moratorium in August, 1994, the FDIC may approve an application by any resulting depository institution to be treated as an insurance conversion transaction and the resulting institution must pay any exit and entrance fee assessed by the FDIC and thus have its deposits subject to assessment by either the SAIF or BIF at the institution's option.

Subsection (b) provides that the amendments made by subsection (a) shall apply with respect to semiannual periods beginning after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act.

Sec. 424. Mergers, Consolidations, and Other Acquisitions Authorized

Section 424(a) adds a new subsection (u) to section 5 of the Home Owners' Loan Act to permit any Federal savings association to acquire or be acquired by any insured depository institution in accordance with sections 5(d)(3) and 18(c) of the FDI Act.

New subsection (u) provides for an expedited approval process, similar to the process described in section 5(d)(3) of the FDI Act above, for conversion transactions by Federal savings associations.

The Director is authorized to prescribe regulations to carry out new section 5(u) of the Home Owners' Loan Act.

Section 424(b) amends the National Bank Act to allow national banks to acquire or be acquired by any insured depository institution. This subsection also prescribes an expedited approval process, similar to the process described above in section 5(d)(3) of the FDI Act.

Sec. 425. Acquisition of Thrift Institutions By Certain Companies Which Control Banks And Are Not Treated As Bank Holding Companies

Section 425(a) adds a new paragraph (14) to section 4(f) of the Bank Holding Company Act to allow a company that controls a bank and is not treated as a bank holding company, as described in section 4(f) of the Bank Holding Company Act as amended by the Competitive Equality Banking Act of 1987, to acquire control of an insured institution in a merger transaction pursuant to section 5(d)(3) of the FDI Act (as amended by section 423 above) without losing its exempt status.

Section 425(b) provides that an insured institution described in new section 4(f)(14) of the Bank Holding Company Act, may engage in any activity that the acquired insured institution engaged in prior to the merger to the extent that the activity is permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act and so long as the resulting institution does not both accept demand deposits and make commercial loans. In addition, notwithstanding the annual asset growth restriction imposed by the Competitive Equality Banking Act of 1987, the resulting institution may increase its assets as result of the merger transaction during a one-year period beginning on the date of such transaction.

CHAPTER 3—FINANCIAL ACTIVITIES OF NATIONAL BANKS

Sec. 431. Securities Activities of National Banks

Section 431 amends paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) regarding the powers of national banks.

The amended provision states that, notwithstanding any other provision of law (including section 5136), a national bank is prohibited, in the United States and pursuant to any express or incidental power, from underwriting, distributing, or selling securities backed by, or representing interests in, a pool of assets originated or purchased by the bank or any affiliate of the bank, and the bank is prohibited from continuing to engage in such activity pursuant to any order issued by the Comptroller of the Currency. A national bank also shall not sponsor, organize, promote, or control an investment company registered under the Investment Company Act of 1940.

Section 5136, as revised by Section 431, would limit the ability of national banks to engage in the United States in any securities activities except to the extent that such activity is specifically authorized by statute, or authorized by a regulation prescribed by, or an order, interpretation, or approval issued by, the Comptroller of the Currency (see Table A for a list of such approvals to date) pursuant to statute, on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, and does not involve the underwriting or distributing by any national bank of securities backed by or representing an interest in a pool of assets originated or purchased by the national bank or any affiliate of the bank. The effect of sections 451 and 452 of this Act is to require banks to move certain securities activities out of the bank into a SEC-registered entity. Any securities activities, including those permitted under this section, continue to be subject to the antifraud provisions of the federal securities laws and to the SEC's enforcement thereof, without regard to where such activities are conducted. No subsidiary of a national bank may engage in any activity in which a national bank may not engage.

Subsection (b) repeals section 20 (12 U.S.C. 377) and section 32 (12 U.S.C. 78) of the Banking Act of 1933, commonly known as the Glass-Steagall Act, effective January 1, 1993.

Subsection (c) makes a conforming amendment to section 9 of the Federal Reserve Act.

Sec. 432. Insurance Activities of National Banks

Section 432(a) provides for insurance activities of national banks in small towns with populations of 5,000 or less and the adjacent rural unincorporated areas. The insurance can only be sold to individuals who are residents of or employed in any small town within that State and persons engaged in any business in that place. "Business" is defined as a principal business office or principal headquarters. Insurance may also be sold to persons with respect to real property or personal property in such place.

Section 432(b) prohibits a national bank which sells insurance pursuant to the town of 5,000 exemption described in subsection (a) from guaranteeing the payment of any premium on any insurance policy for which the bank is acting as agent or guaranteeing the truth of any statement made by an insurance customer in applying for insurance.

Section 432(c) prohibits any national bank, or subsidiary, from selling or underwriting title insurance. The prohibition does not apply with respect to title insurance agency activity if a bank was actively and lawfully engaged in such activity as of June 1, 1991. Authorization to engage in title insurance activities is not sufficient without evidence of ongoing activity implementing that authority as of June 1, 1991.

Section 432(d) repeals the small town exception referred to in paragraph (2) to the extent the exception is still in existence before the date of enactment of this Act. Nonetheless, a new small town exception is explicitly enacted for purposes of this Act in subsection (a). Some controversy presently exists as to whether the small town exception was previously repealed. The Office of Law Revision Counsel has taken the position in the past that the exception was repealed. However, this controversy is the subject of pending litigation and it is the intent of this legislation to remain neutral in deciding that question. This section simply repeals the pre-existing small town exception, if it is determined to have not previously been repealed.

Sec. 433. Amendments To Section 23A and 23B of the Federal Reserve Act

Section 433(a) contains a series of amendments to section 23A of the Federal Reserve Act.

Section 23A of the Federal Reserve Act includes as a transaction with an affiliate any transaction by a member bank or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, such person.

Subsection (a)(1) prohibits a financial services holding company from permitting an insured depository institution subsidiary to engage in any "covered transaction," as defined in section 23A of the Federal Reserve Act if the covered transaction exceeds 5 percent of the insured depository institution's capital stock and surplus, unless 5 days notice has been provided to the Board and the appropriate Federal banking agency.

Section 433(a) amends the definition of the term "affiliate" in three respects. First, it includes in the definition any investment company, commodity pool, or other company engaged in such activities if a member bank or any member bank affiliate is an investment adviser, commodity trading advisor, or performs substantially equivalent activities for the company.

Second, under current law, a nonbank subsidiary of a member bank is presumed not to be an affiliate. The amendment changes this presumption to encompass only subsidiaries of which the member bank owns at least 80 percent of the voting stock.

Under existing section 23A, the term "bank" includes a trust company. Section 433(a)(4) amends the definition of "bank" to include trust companies principally engaged in deposit taking or lending activities.

Section 433(a)(7) adds three transactions to the list of covered transactions in section 23A: First, a member bank's assumption of a liability of any affiliate is defined to be a covered transaction. Second, any transaction intended to enhance the marketability of securities, obligations, or assets underwritten or distributed by an affiliate, unless there is substantial participation by other lenders in the transaction, is defined to be a covered transaction. Any transaction concerning securities that a member bank may underwrite under current law is exempt. Third, any financial transaction determined by the Federal Reserve Board by regulation to be the same as a covered transaction is added.

Section 23A currently requires collateral to secure letters of credit issued on behalf of

an affiliate. Section 433(a) provides that collateral is also required for letters of credit issued to affiliates.

Under current law, securities issued by an affiliate of a member bank are not considered acceptable collateral. Section 433(a) extends this treatment to securities issued by the member bank itself. Similarly, letters of credit issued on behalf of an affiliate are not considered acceptable collateral under current law. Section 433(a) extends this treatment to letters of credit issued to affiliates.

Although current law excepts the purchase of securities issued by a bank service corporation from the provisions of section 23A, section 433(a) qualifies the exemption to apply only to those service corporations that provide services solely to affiliated member banks.

Section 433(b) contains a series of amendments to section 23B of the Federal Reserve Act.

Under existing section 23B, covered transactions include those with a third party in the following two cases: (1) if an affiliate has a financial interest in the third party; or (2) if an affiliate is a participant in such a transaction. Section 433(b) adds a third case to the list: Any transaction with a third party who is a customer of an affiliate (as defined in section 2 of the Bank Holding Company Act).

Existing section 23B prohibits a member bank or its subsidiary from acquiring, during the existence of any underwriting or selling syndicate, any security if a principal underwriter is an affiliate of the bank. The only exception is if the acquisition was approved before the securities were initially offered for sale to the public by a majority of the bank's board of directors, provided those directors are not officers or employees of the bank or any affiliate. Section 433(b) amends this exception to require that the majority of directors not be officers, directors, or employees of the affiliate.

Sec. 434. Customer Disclosures

Section 434 amends Section 18 of the Federal Deposit Insurance Act to add a new subsection (o) entitled "Customer Disclosure Regarding Securities, Insurance, and Other Nonbanking Products."

New subsection (o)(1) requires an insured depository institution to prominently disclose in writing to each of its customers that any securities or insurance products offered, recommended, or sold by the institution are not deposits, are not insured by the FDIC, are not guaranteed by the institution or any affiliate, and are not an obligation of the institution, unless such is the case.

Under new subsection (o)(2), an insured depository institution may not permit securities or insurance products to be offered, recommended, or sold on the institution's premises or to an institution's customer as part of joint marketing activities with another entity, unless the other entity prominently discloses in writing that it is not an insured institution and is separate from the insured depository institution.

Under new subsection (o)(3), the insured depository institution or any affiliate must obtain from any customer prior to the sale of any noninsured instrument or financial product a written receipt of a declaration in 18 point bold type acknowledging that the product is uninsured and that the customer might lose some or all of his or her money.

An exception to this section is provided for transactions by a broker or dealer or government securities broker or dealer registered under the Securities Exchange Act of 1934. Brokers and dealers and government securities brokers and dealers are otherwise subject to customer disclosure requirements under the federal securities laws.

In addition, insurance activities of an affiliate of an insured depository institution that are (1) not conducted on the premises, (2) not part of any joint marketing, or (3) do not in any way involve an insured depository institution are exempt from the customer disclosure requirements in this section. The rationale here is that insurance activities not connected to an insured depository institution are not likely to lead to customer confusion about the Federally insured status of insurance products. An example would be an insurance company that owns a nonbank bank which is an insured depository institution. The disclosure requirements in this section are not intended to apply to insurance activities totally disassociated from the nonbank bank.

The amendment also clarifies that the customer disclosure requirements of this section are not intended when an insured depository institution makes a loan or an extension of credit. However, to the extent a loan or extension of credit is combined or marketed with an insurance product, then the customer disclosure requirements in this section are applicable to the insurance product.

Under subsection (o)(4), the appropriate Federal banking agencies, with respect to insured depository institutions and financial services holding companies, and the SEC, with respect to persons registered with it, may adopt regulations governing disclosures required by this section.

Sec. 435. Bankers' Banks

This section amends the National Banking Act to permit bankers' banks to provide services to holding companies as well as depository institutions.

CHAPTER 4—NONBANKING ACTIVITIES OF FOREIGN BANKS IN THE UNITED STATES

Sec. 441. Amendments to the International Banking Act of 1978

Section 441(a) amends section 8(a) of the IBA. Amended paragraph 8(a)(1) provides that any foreign bank that has a branch, agency or commercial lending company in the United States is subject to nonbanking activity restrictions of the Bank Holding Company Act to the same extent and in the same manner as a financial services holding company. Paragraph 8(a)(2) subjects companies owning the foreign banks described in 8(a)(1) to the Bank Holding Company and the anti-tying provisions of the Bank Holding Company Act Amendments of 1970 as well.

Paragraph 8(a)(3) of the IBA requires that the Board set capital and other financial requirements comparable to those of a United States financial services holding company for any foreign bank or company controlling a foreign bank seeking to conduct nonbanking activities permissible under this Act. The Board shall disapprove any application or notice by foreign bank to engage in any nonbanking activity unless such capital and other financial requirements are met by the applicant. In making its determination, the Board is required to take into account differences in domestic and foreign accounting standards and assure that competitive comparability between domestic and foreign banks is maintained.

Section 441(b) amends Section 8(c) of the IBA to cause the authority under the IBA for the continued operation of certain foreign bank subsidiaries operating before 1978 to expire upon a finding by the Board that the activity of such subsidiary has been authorized by statute as a permissible activity for financial service holding companies in the United States.

SUBTITLE B—AMENDMENTS TO FEDERAL SECURITIES LAWS

CHAPTER 1—REGULATION OF SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS

Part I—Broker-Dealer Provisions

Section 451 (Definition of Broker) amends the definition of "broker" in section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act) to include banks, with certain specified exceptions. A bank that falls within the definition of "broker" would have to conduct its brokerage activities in a subsidiary or affiliate that is not a bank, registered with the SEC and subject to SEC regulation (see section 454) unless otherwise exempted (see sections 453 and 454).

There are two important exceptions. Activities falling within the exceptions could still be conducted in the bank subject to regulation by the appropriate bank regulator. These exceptions permit: (1) fiduciary securities activities, if the bank does not publicly solicit brokerage business or receive commissions or similar transaction-based compensation (excluding fees calculated as a percentage of assets under management); and (2) transactions in exempted securities, commercial paper, bankers' acceptances, and commercial bills.

Section 452 (Definition of Dealer) amends the definition of "dealer" in section 3(a)(5) of the Exchange Act to include banks, with certain specified exceptions. The initial exception is for a person who purchases and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. This restates existing law applicable to any person. Two additional exceptions are added: (1) a bank that purchases and sells commercial paper, bankers' acceptances, commercial bills, or exempted securities; and (2) a bank that purchases and sells securities for investment purposes for the bank or for accounts in which the bank, acting as trustee, is authorized to determine the securities to be purchased or sold.

Section 453 (Power to Exempt from the Definition of Broker and Dealer) amends section 3 of the Exchange Act to add a new subsection (e) authorizing the SEC to exempt any person or class of persons, conditionally or unconditionally, from the definitions of "broker" or "dealer" if such exemption would be consistent with the public interest, the protection of investors, and the purposes of this title.

Consistent with the Exchange Act's statutory objectives of ensuring the protection of the investing public and fair competition among securities participants, all institutions providing brokerage services should be subject to the same regulatory scheme. Therefore, sections 451 and 452 do not contain lengthy lists of exceptions. Rather than create legislative loopholes subject to possible exploitation, it is intended that the SEC use its authority under this section in appropriate circumstances. For example, the SEC should consider whether it is necessary for a bank currently subject to section 15(e) of the Exchange Act[4] and in compliance with

[4] Section 15(e) of the Exchange Act provides:

(e) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title

all the terms and conditions imposed thereunder to have to register as a "broker" under section 451.

The Committee also intends that the SEC use its authority under section 453 of this legislation to exempt from the definition of "broker" banks that only transact accommodation trades. The factors to be considered by the SEC in determining the scope of this accommodation exemption should include: (1) the de minimis number of separate transactions conducted by the bank in any fiscal year for the account of others in any securities; (2) whether the bank passes on only external costs and a reasonable service fee or has a more elaborate commission-based compensation structure; (3) whether banks pay employees on a commission basis for trades executed for customers; (4) whether the bank actively publicizes its securities execution facilities or makes its services available only to pre-existing customers; and (5) whether the bank is actively and regularly in the securities business either through activities conducted in the bank or through a direct subsidiary of the bank or through a broker-dealer affiliate.

Similarly, the SEC may consider a "networking" exemption along the lines of the networking exemption included in lines of former Rule 3b-9, to accommodate banks that associate with registered broker-dealers to provide securities services.

The authority given to the SEC in this area is intended to give the SEC independent discretion to grant exceptions from either or both of the definitions of broker and dealer, without a decision to grant an exception from one definition requiring that the same person or class of persons be granted an exception from the other definition.

Section 454 (Bank Securities Activities in a Separate Corporate Entity) amends the general registration requirement for brokers and dealers under section 15(a) of the Exchange Act to prohibit a bank from acting as a broker or dealer, except on an exclusively intrastate basis. This change is intended to require banks that come under the revised definitions of "broker" or "dealer" in the Exchange Act to create a separate affiliate or subsidiary to perform these securities activities. The SEC, as in current law, may consistent with the public interest and the protection of investors, conditionally or unconditionally exempt any broker or dealer or class of broker or dealers from this requirement or the general registration requirement.

Section 455 (Provisions Relating to Broker-Dealers Affiliated with Depository Institutions) amends the Exchange Act to insert after section 15C a new section 15D. This new section mirrors the restrictions in new section 4(n) of the Bank Holding Company Act to place restrictions on transactions between affiliates within a holding company where the holding company controls a securities affiliate. These prohibitions are necessary to enhance compliance with the safeguard provisions of Subtitle A of this Act by providing for surveillance of, and enforcement of compliance against, parties on both sides of the firewalls.

Section 15D(a)—Definitions—Section 15D(a) contains definitions.

Section 15D(b)—Consumer Protection Provisions—Section 15D(b) contains consumer protection provisions relating to disclosures by bank-affiliated broker-dealers regarding federal deposit insurance, to disclosures of confidential customer information, and to limitations on advertisements.

Section 15D(b)(1)—Disclosures by Bank-Affiliated Broker-Dealers Regarding Federal Deposit Insurance—Section 15D(b)(1) requires a registered broker or dealer that is an affiliate of an insured depository institution, in accordance with regulations prescribed by the SEC, to provide notice to its customers of the inapplicability of Federal deposit insurance with respect to securities or other financial products recommended, offered, or sold by such broker-dealer. Specifically, such broker-dealer must notify customers:

(1) that the registered broker or dealer is not an insured depository institution and is a separate corporate entity from the insured depository affiliate;

(2) whether the securities or other financial products underwritten, sold, offered, or recommended by such registered brokers or dealers are FDIC insured deposits or are guaranteed as to principal or interest by or are otherwise obligations of the insured depository institution;

(3) whether or not an affiliated insured depository institution is permitted by law to extend or arrange for the extension of credit or to provide any credit instrument or facility to or for the benefit of an issuer of any security that the registered broker or dealer sells or offers for sale; and

(4) of any additional information the SEC deems necessary.

The regulations prescribed by the SEC shall specify the time and manner by which such notice shall be provided to customers, and further shall specify when, under what circumstances, and by what means and procedures the notice required under this paragraph shall be made available in languages other than English. The Committee does not intend that the SEC adopt rules requiring the use of other languages for other disclosure documents required under the federal securities laws.

Section 15D(b)(2)—Disclosures of Confidential Customer Information Prohibited—Section 15D(b)(1) makes it unlawful for a securities affiliate to disclose, directly or indirectly, any confidential customer information to any person without the prior written consent of that customer. Section 15D(b)(2)(E) defines the term "confidential customer information" to exclude: (i) information obtainable either from an unaffiliated credit bureau or similar entity or from any other unaffiliated entity in the ordinary course of business; (ii) information provided to a credit bureau or similar entity in the ordinary course of business; (iii) information obtainable in connection with insurance under certain circumstances; and (iv) information provided to the SEC or a self-regulatory organization or in accordance with the Right to Financial Privacy Act of 1978.

Section 15D(b)(2) further requires that records or other evidence of a customer's written consent be maintained. This provision also enables the SEC to prescribe regulations limiting disclosures of nonpublic customer information from a securities affiliate to any of its affiliates.

This section does not affect other laws governing the use of material nonpublic information, such as the prohibitions against insider trading. Thus, for example, although this section allows disclosure of nonpublic information with the customer's written consent, it in no way legitimizes an otherwise impermissible use of that information to purchase or sell a security.

Section 15D(b)(3)—Limitations on Advertisement—Section 15D(b)(3) requires the SEC to prescribe regulations to prohibit any securities affiliate from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that an affiliated insured depository institution or the Federal Government is responsible for or stands behind the activities or credit of the securities affiliate or that it guarantees any returns on securities sold by the affiliate or is a source of payment of any obligation of or sold by the affiliate. It is not intended that such regulations prohibit a securities affiliate from imparting accurate information about securities for which the Federal Government is a source of payment or on which it guarantees any returns.

This advertisement limitation is in addition to certain certifications of understanding that the customers must sign when a purchase is made of each and every uninsured obligation on the floor of an insured depository institution, as well as when the customer opens an account at the securities affiliate. Notwithstanding such customer certification, there may still be instances in which the inclusion of the logo, name, slogans, and similar information of the securities affiliates may be considered as misleading if it is presented in a way that causes a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of a securities affiliate of the institution, stands behind the affiliate's credit, guarantees any returns on securities sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. With respect to registered investment companies, however, section 466 would prohibit an investment company that has as investment adviser or distributor an insured depository institution from adopting, as part of its name, title, or logo, any word or design that is the same or similar to the name of the insured depository institution.

Section 15D(c)—Requirements Applicable in the Case of Financial Services Holding Companies with Securities Affiliates—Section 15D(c) creates a series of safeguard or "firewall" provisions. These so-called "firewall" provisions are designed to prohibit unsound banking practices, risk of loss to the bank insurance fund and the extended safety net, conflicts of interest, unfair competition, undue concentration of resources or decreased competition, diminution in investor protection, and related concerns that would negatively impact the banking system and the securities markets, and the stability of and confidence in both. Section 15D(c)(1) provides that it shall be unlawful for a securities affiliate directly or indirectly to engage in any of the following transactions involving an affiliated insured depository institution:

(A) Except as provided in paragraph (3), knowingly obtain, receive, or enjoy the beneficial use of credit from an affiliated insured depository institution, with an exception provided in subsection (c)(3) for extensions of credit made in the course of clearing U.S. Government or agency securities where such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured in both principal and interest by such securities.

(B) knowingly obtain, receive, or enjoy the beneficial use of a guarantee, acceptance, or letter of credit, endorsement, asset purchase

(other than section 15(a) [registration requirements]) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an insured depository institution.

(C) sell to an affiliated insured depository institution, for its own account, or for the account of any subsidiary of the institution, any financial asset of the securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

(D) sell to an affiliated insured depository institution, for its own account or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust), of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until (i) in the case of an underwriting, 60 days after completion of the underwriting period or (ii) in the case of a placement, 60 days after the completion of the placement.

(E) knowingly sell to a customer account for which an affiliated insured depository institution or its subsidiary, acting as a fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which the securities affiliate is an underwriter or a member of the selling group or which the securities affiliate otherwise places (whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity), unless such purchase is permitted by state law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses [in accordance with regulations prescribed by the Board] any conflict of interest that an insured depository institution may have in making such purchases) until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after completion of the placement.

Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

This provision does not authorize boilerplate endorsements, contracts of adhesion or lack of informed consent. State trust law supports the requirement of disclosure and informed consent of the trust beneficiary. Generally applicable principles of state trust law demand that a trustee avoid any dealings that may pose a conflict between the interests of the beneficiaries and the trustee's own self-interest. See Scott Sec. 170; 76 Am. Jur. 2d Trusts Sections 317, 318; see also 10 Am. Jur. 2d Banks Section 307.

(F) arrange for the extension of credit from an affiliated insured depository institution to any investment company which is sponsored, organized, controlled, promoted, or advised by the securities affiliate except as permitted by the SEC pursuant to section 18(f)(3) of the Investment Company Act.

(G) arrange for the extension of credit from, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to an issuer of securities of which the securities affiliate is an underwriter for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities (examiners, for example, would be required to review credit flows to such an issuer to monitor flows for such possible misuses, and, in particular, to focus on the timing and amount of loans, as well as their maturity and relative interest rate, as potentially indicative of such improper purposes).

(H) arrange for the extension of credit to a customer of the securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by such securities affiliate.

(I) except as permitted under section 4(n)(4)(G) of the Bank Holding Company Act of 1956, arrange for the extension of credit from, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to or for the benefit of the issuer of any security of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places until (i) in the case of an underwriting, 90 days after the end of the underwriting period or (ii) in the case of a placement, 90 days after the end of the placement.

(J) purchase any financial asset of an affiliated depository institution or a subsidiary thereof that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency, with an exception provided in paragraph (5) of section 15D(c) for certain sales of assets.

Securities issued by an open-end investment company or a unit investment trust are excepted from the prohibitions in subparagraphs (D) and (E) because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

The prohibition against either directly or indirectly engaging in the transactions listed above involving an affiliated insured depository institution is intended to encompass all actions, direct or indirect, that result in such transactions and whose effect could be to benefit the securities affiliate to the detriment of the insured depository institution, to create an unfair competitive advantage for an affiliate, or to prejudice investors. For example, an insured depository institution could not make a loan to a customer on the collateral of securities issued by its securities affiliate. Such a loan would contravene the safeguard provided in section 15D(c)(1)(A).

Section 15D(c)(2)—Certain Financial Transactions of Holding Companies and Subsidiaries During Distributions Prohibited—Section 15D(c)(2) prohibits a securities affiliate from, directly or indirectly, arranging for the extension of credit from any affiliated financial services holding company or subsidiary of a financial services holding company to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such financial services holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or a unit investment trust or securities of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

This paragraph excepts out securities issued by an open-end investment company or a unit investment trust because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

Section 15D(c)(3)—Exception for Intra-Day Extensions of Credit in Connection with Clearing Government Securities Section 15D(c)(3) provides an exception from the general prohibition on extensions of credit included in section 15D(c)(1)(A). Extensions of credit made in the course of clearing U.S. Government or agency securities are permissible if such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured by such securities. While clearing credit is to be repaid on the same calendar day, the creditors' customers may have been unable to deliver securities to their customers because a portion of the securities expected were not delivered in a timely fashion. The impact of a delivery fail, or a computer or other funding or delivery difficulty may cause clearing credit that is "to be repaid on the same calendar day" to be delayed for a day or so. Such delays are intended to be permitted under this provision.

Section 15D(c)(4)—Prohibitions on Discriminatory Credit Treatment—Section 15D(c)(4) provides that no securities affiliate shall knowingly obtain or arrange for an extension of credit or services that would violate section 4(n)(4)(D) of the Bank Holding Company Act of 1956. That provision prohibits discriminatory treatment of or anticompetitive actions with regard to unaffiliated entities with respect to the provision of credit or services by an insured depository institution.

Section 15D(c)(5)—Asset Purchases From Affiliated Insured Institutions or Subsidiaries Thereof—Section 15D(c)(5) permits a securities affiliate, notwithstanding paragraph (1)(I) of section 15D(c) but subject to section 23B of the Federal Reserve Act, to purchase any asset of an affiliated insured depository institution for the purpose of including such assets in a pool in connection with the issuance of asset-backed securities if:

(I) those securities are rated as investment grade by at least one unaffiliated, nationally recognized statistical rating organization;

(II) those securities are issued or guaranteed by a government sponsored enterprise determined to be permissible by the Board for purposes of section 4(n)(4)(F)(i)(II) of the Bank Holding Company Act of 1956;

(III) those securities represent interests in securities described in (II) above;

(IV) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent un-

derwriter which has also participated in preparing the registration statement and prospectus, offering circular, or similar document; or

(V) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

The SEC, in consultation with the Board, shall prescribe regulation to ensure compliance with these requirements. The above-listed exceptions to paragraph (1) (I) of section 15D(c) are intended largely to parallel NASD Schedule E, which addresses asset sales to affiliated entities for underwriting purposes.

Section 15D(d)—Regulation of Transactions in Certain Securities on Bank Premises—Section 15D(d) amends section 15 of the Exchange Act to impose restrictions on the offer or sale of certain securities on bank premises. Generally, equity securities or debt issued by a bank or any affiliate of a bank may not be offered or sold to the general public in any office of the bank that is commonly accessible to the general public for the purpose of accepting deposits. This restriction does not apply to shares of registered investment companies affiliated with the bank if such securities are offered for sale by a registered broker-dealer. The restrictions of section 15D(d) also do not apply to ownership interests that are deposits or that constitute a means of payment to a third party such as a traveler's check or cashier's check. Although these instruments generally are not deemed to be securities, this provision has been included to make clear that they may be offered on a bank's premises.

Section 15D(e)—Prohibition on Reciprocal Arrangements Within the Holding Company—Section 15D(e) prohibits a securities affiliate of a financial services holding company from engaging in such transaction or reciprocal arrangements for the purpose of evading any restriction or limitation imposed by the safeguard provisions of this Act.

The prohibition includes reciprocal as well as nonreciprocal unaffiliated companies, and customers for the purpose of evading the provisions of the bill.

Section 15D(f)—Interlocking Directors, Management Officials, and Employees Prohibited—Section 15D(f) prohibits a securities affiliate controlled by a financial services holding company from allowing any director, management official, or affiliate employee of such to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of such holding company or any subsidiary of any such institution. The SEC is given the authority to grant exemptions, with the approval of the Board, from these interlocking restrictions. In making such determinations, the SEC shall consider the size of the financial services holding company, insured depository institution and securities affiliate involved; the burdens such restrictions impose; the safety and soundness of the insured depository institution and securities affiliate; and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information.

This provision contains two exceptions: (1) for certain small financial services holding companies and (2) for certain back office operations. The SEC is directed to grant, by regulation, an exemption with respect to interlocks with respect to holding companies whose total banking assets do not exceed $500,000,000. Further, the prohibitions under paragraph (1) of section 15D(f) do not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions if such functions are performed in a separate office or facility that is not open to the general public and in a manner consistent with requirements determined by the SEC after consultation with the Board.

The term "management official" includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

Section 15D(g)—Authority to Modify and Impose Additional Safeguards—Section 15D(g) permits the SEC, in order to maintain investor protection and to ensure that the activities of any securities affiliate are conducted without the support of insured depository institution affiliates, to:

(1) by regulation or order, adopt additional limitations or restrictions on arranging or accepting any transaction that has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, a securities affiliate or any customer of such affiliate, and

(2) after consulting with and considering the views of the Board, modify by regulation any limitation on the activities of a securities affiliate of a financial services holding company contained in this section.

Paragraph (2) of section 15D(g) establishes standards governing the exercise of authority under paragraph (1) of section 15D(g). Specifically, any authority under paragraph (1)(A) is to be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, unsafe banking practices, preservation of the safety and soundness of insured depository institutions, undue risks to the Federal deposit insurance funds, and the protection of investors.

Any authority under this paragraph (1)(B) to modify any limitation on activities contained in this section shall be exercised only if the SEC, after consulting with and considering the views of the Board, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, or undue risks to the Federal deposit insurance funds.

It is intended that the authority under this paragraph (1)(B) not be exercised in such a way as to undermine, directly or indirectly, in whole or in part, the intent of the firewalls and the investor, depositor, taxpayer and other safeguards contained in section 15D. It is also expected that the SEC and the Board will be responsive to one another's views and will act pursuant to this paragraph in a coordinated fashion. Because of the mirror-image safeguards established by this Act that are to be enforced by the SEC and the Board with respect to the securities affiliate and the insured depository institution, respectively, unilateral or inconsistent action by either agency will have the practical effect of negating modification of any limitation made pursuant to this paragraph.

Section 15D(h)—Divestiture for Continuing Course of Misconduct—Section 15D(h) provides the SEC with the authority to require a financial services holding company to divest either its securities affiliate or the insured depository affiliate, at the option of the holding company, where the holding company or its securities affiliate has engaged in a continuing course of conduct involving violations of the securities activities and firewall provisions contained in new section 15D of the Exchange Act. This section also provides notice, administrative hearing, and adjudicatory procedures for requiring such divestiture.

Section 456 (Broker-Dealer Disclosure With Respect to Fiduciary Purchases In Underwritten Securities) amends section 15 of the Exchange Act by adding a new subsection (h). This provision requires informed consent with respect to certain fiduciary transactions.

Under this subsection, no broker or dealer may purchase, for a customer account in which the broker or dealer, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such broker or dealer or affiliate thereof is an underwriter or a member of the selling group or which the broker, dealer, or affiliate otherwise places until (I) in the case of an underwriting, 90 days after the end of the underwriting period; or (II) in the case of a placement, 90 days after the completion of the placement.

Paragraph (2) of subsection 15(h) states that these restrictions apply whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the broker or dealer to act in a fiduciary capacity, unless such purchase is permitted by State law; is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship; and is effectuated by endorsement, by the creator of the fiduciary relationship, of a separate document that discloses (in accordance with the regulations prescribed by the SEC) any conflict of interest that the broker or dealer may have in making such purchase. Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred above is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

Part II—Bank-Investment Company Activities

Section 461 (Custody of Investment Company Assets By Affiliated Banks) amends sections 17(f) and 26(a)(1) of the Investment Company Act to clarify and strengthen the SEC's authority to adopt regulations governing the conditions under which banks may serve as custodians of affiliated investment companies. Specifically, a registered investment company is permitted to place its assets with a bank that is an affiliated person of such a company only if expressly permitted by rules, regulations, or orders that the SEC may adopt consistent with the protection of investors. Without this provision, a bank could cause its affiliated investment company to select the bank as the investment company's custodian, thereby depriving the investment company of an independent custodian and creating the potential for abuse and self-dealing.

Regulation of custodianship of securities owned by an investment company has his-

torically been one of the fundamental investor protection mechanisms of the Investment Company Act. Modification of Glass-Steagall Act prohibitions on commercial banks engaging in certain investment banking activities creates new dangers and threatens to erode the consumer protection safeguards afforded by independent bank custodianship of assets owned by investment companies. Because of the greater potential for abuse where an affiliated rather than an independent bank serves as custodian, it is anticipated that the SEC will authorize affiliated bank custodianship only where the conditions and limitations imposed by the SEC assure that investors enjoy the same degree of protection as exists under independent bank custodianship today.

The concern that affiliated bank custodianship presents opportunities for abuse not present in truly independent bank custodianship is not solely with outright theft, which is exceedingly rare, but with unconventional practices which injure investors. Any regulations or orders of the SEC authorizing affiliate bank custodianship should take into account such practices, including the tying of underwriting services to the appointment of an affiliated bank as custodian.

Subsection (b) of section 461 makes a similar amendment to section 26(a)(1) where a bank affiliated with a unit investment trust seeks to serve as its trustee.

Subsection (c) of Section 461 amends section 36 of the Investment Company Act to establish for custodians of registered investment companies a federal standard of fiduciary duty in dealings between such fund or trust and its custodian. Section 36 currently authorizes the SEC to bring an injunctive action against a breach of fiduciary duty involving personal misconduct.

Section 462 (Affiliated Persons and Transactions) amends section 2(a)(3) of the Investment Company Act to add to the definition of "affiliated person" a new clause (G). Under this clause, the SEC may, by order, rule, or regulation, designate any person or class of persons as "affiliated persons" of an investment company by reason of having had, at any time since the beginning of the last two completed fiscal years of such investment company, a material business or profession relationship with such investment company or with any person that is a principal underwriter for, or promoter or sponsor of, such company or any affiliated person of such investment company. For purposes of new clause (G), a material business or profession relationship is one that arises from material extensions of credit or other material borrowing or such other relationships as the SEC finds to be within the intent of this definition, consistent with the public interest and the protection of investors.

This section also prohibits an investment company from knowingly acquiring securities during an underwriting where the proceeds will be used to retire indebtedness to an affiliated bank. Specifically, section 10(f) of the Investment Company Act is amended to prohibit a registered investment company from knowingly purchasing or acquiring, during the existence of an underwriting or selling syndicate, any security (except a security of which it is the issuer) the proceeds of which will be used to retire indebtedness owed to a bank or insured depository institution where such bank or institution or an affiliated person thereof is an affiliated person of such registered company.

Section 463 (Prohibition of Controlling Interest in Investment Company) restricts an investment adviser (and affiliated persons thereof) to an investment company in its ability to own, directly or indirectly, controlling interests in such investment company if it also holds shares of that investment company as a fiduciary. Section 15 of the Investment Company Act is amended to allow such controlling interest only if the adviser (1) passes through to the beneficial owners of the shares the power to vote them; (2) votes such shares in the same proportion as shares held by all other shareholders of the investment company; or (3) acts as otherwise Permitted by the SEC consistent with the protection of investors.

Section 464 (Borrowing from an Affiliated Bank) prohibits a registered investment company from borrowing from an affiliated bank or insured depository institution except as permitted by the SEC. Specifically, section 18(f) of the Investment Company Act is amended to prohibit any registered investment company from borrowing from any bank or insured depository institution if such bank or institution or any affiliated person thereof is an affiliated person of such company, except that the SEC may, by rule, regulation, or order, permit such borrowing as the SEC finds to be in the public interest and consistent with the protection of investors.

Section 465 (Independent Directors) amends two provisions of the Investment Company Act to strengthen its requirements for independent directors serving on the boards of investment companies.

Subsection (a) amends the definition of "interested person" in section 2(a)(19)(A) of the Investment Company Act to include (1) in clause (v), any person that, at any time during the last 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such person; and (2) in a new clause (vi), any employee of a bank or insured depository institution that acts as custodian or transfer agent for such company. Such persons would not be prevented from serving as directors of that investment company; rather, they merely would be considered "interested persons" for purposes of the required percentage of disinterested or independent directors of that investment company. The amendment is effective one year after the date of enactment of the Act.

Subsection (b) amends section 10(c) of the Investment Company Act, which currently provides that no registered investment company may have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank. The amendment extends the prohibition to the officers, directors, or employees of any one bank and its subsidiaries, or any one bank holding company and its affiliates and subsidiaries. This eliminates the potential to circumvent the legislative intent of section 10(c) by a bank or insured depository institution operating under a multiple bank holding structure.

Section 466 (Prohibition Against Use of a Bank's Name by an Affiliated Investment Company) amends section 35(d) of the Investment Company Act to prohibit under certain circumstances the use by an investment company of a name, title, or logo that is the same as or similar to the name, title, or logo of any affiliated bank or insured depository institution. If a bank or insured depository institution affiliate advises or distributes an investment company with a name or logo similar to that of such affiliated bank or institution, or if a bank or insured depository institution or affiliate of such bank or institution acts as investment adviser to an investment company that has a name or logo that is similar to that of such affiliated bank or institution, investors may be misled into believing that the investment company shares are insured deposits or backed by the bank's resources or those of the insured depository institution. Moreover, the resulting link in the public mind between a bank or insured depository institution and its investment company may damage such bank's or institution's reputation and public confidence in such bank or institution if its affiliated investment company encounters financial difficulty.

In addition, section 35(a) of the Act will continue to prohibit any person from representing or implying that an investment company, or its securities, are guaranteed by the United States.

Section 467 (Definition of Broker) amends the definition of "broker" in section 2(a)(6) of the Investment Company Act to reflect the bill's amended definition of that term in the Exchange Act. As before, the new definition would not include any person (including a bank) solely by reason of the fact that such person is an underwriter for one or more investment companies.

Section 468 (Definition of Dealer) amends the definition of "dealer" in section 2(a)(11) of the Investment Company Act to reflect the bill's amended definition of that term in the Exchange Act. The new definition would continue to exclude insurance companies and investment companies.

Section 469 (Treatment of Bank Common Trust Funds) amends section 3(a)(2) of the Securities Act of 1933 (Securities Act), 3(a)(12)(A)(iii) of the Exchange Act, and 3(c)(3) of the Investment Company Act to clarify that a bank or insured depository institution common trust fund is entitled to the exemptions from the registration and reporting provisions of these Acts only where (1) the fund is used as an aid to the administration of bona fide fiduciary accounts and (2) the fund is not publicly offered. These provisions would codify in the Acts the original legislative intent of the exemptions, that any publicly-offered common trust fund is the functional equivalent of an investment company and must be regulated as such. See S. Rep. No. 184, 91st Cong., 1st Sess. 27 (1969).

Section 470 (Purchase of Investment Company Securities as Fiduciary) adds a new subsection to Section 17 of the Investment Company Act. The new subsection makes it unlawful for a financial services holding company, an affiliated person of a financial services holding company, a bank or insured depository institution or any affiliate thereof, to exercise discretion over fiduciary accounts to purchase as fiduciary any securities issued by an affiliated investment company unless any investment management, investment advisory, or similar fee received with respect to the fiduciary assets invested in securities of such investment company is waived. The new subsection provides an exception to this restriction where (A) the purchase or conversion is required by court order; (B) in the case of a discretionary account immediately revocable upon notice to the fiduciary and the beneficiary of the account has first received full disclosure; or (C) the beneficiary of the account has first received full disclosure and has granted prior, written consent.

If a banking organization that sponsors or acts as investment adviser to an investment

company, or underwrites shares of an investment company, exercises investment discretion over fiduciary accounts to purchase as fiduciary securities issued by the investment company, the banking organization could harm trust beneficiaries by assessing to the fiduciary accounts new or higher fees than previously assessed to the accounts. Such actions could permit the banking organization to use the fiduciary accounts as a captive market to increase the banking organization's advisory fees. This provision recognizes the greater hazards of self-dealing from holding company arrangements under which a bank or insured depository institution affiliate has a fiduciary obligation both to the fund it advises and to the individual fiduciary accounts it manages on a discretionary basis.

The SEC is granted the authority, after consultation with the appropriate federal banking agency, to regulate the manner, form, and content of the disclosures required to be made in this section.

Section 471 adds a new subsection to Section 17 of the Investment Company Act.

This amendment restricts the circumstances under which bank or insured depository institution common trust funds may be converted into affiliated investment companies in order to protect common trust fund participants from overreaching or unfairness that may occur in the conversion context. This provision protects common trust fund participants from this and other potential abuses by requiring banking organizations that convert their common trust funds to mutual funds to waive any investment management, investment advisory or similar fee with respect to the fiduciary assets invested in securities of the investment company. This restriction does not apply where (A) the conversion is required by court order; (B) in the case of a discretionary account immediately revocable upon notice to the fiduciary and the beneficiary of the account has first received full disclosure; or (C) the beneficiary of the account has first received full disclosure and has granted prior, written consent.

The SEC is granted the authority, after consultation with the appropriate Federal banking agency, to regulate the manner, form and content of the disclosures required to be made in this section.

Section 472 (Extension of Credit for Purchase of Investment Company Securities) adds a new subsection to Section 17 of the Investment Company Act. This new subsection prohibits a financial services holding company or a bank or insured depository institution affiliated with an open-end investment company or unit investment trust from making loans to customers for the purpose of purchasing shares of the open-end investment company or unit investment trust with which it is affiliated. The new subsection would also prohibit such holding company or bank or insured depository institution from extending credit or arranging to extend credit on any security issued by such company or trust unless (A) the security was purchased pursuant to a plan for the automatic reinvestment of the dividends of such company or trust or (B) the security has been owned by the person to whom credit is extended or for whom it is arranged for more than 30 days or for such other period as the SEC may prescribe. This provision further empowers the SEC to adopt exemptive rules and orders in appropriate cases. This amendment would restrict extensions of credit by banks similarly to the current restrictions on extensions of credit by broker-dealers in Section 11(d)(1) and rules 11d1-1 and 11d1-2 under the Securities Exchange Act of 1934.

When a bank or insured depository institution sponsors or acts as investment adviser to an open-end investment company or unit investment trust, or underwrites securities issued by an open-end investment company or unit investment trust, such bank or institution may be tempted to make unsound loans to customers to enable them to purchase shares of such fund or trust in order to increase the underwriting and/or advisory fees due to the insured depository institution or its affiliate. This amendment prevents such abuses.

Section 473 (Access to Nonpublic Information) amends section 17 of the Investment Company Act to provide a new subsection that would prohibit a financial services holding company, insured depository institution, bank or affiliated person thereof that acts as investment adviser to an investment company to provide access to certain nonpublic information to employees or agents that provide investment advisory services to the investment company. Specifically, this provision prohibits access to nonpublic information that: (A) concerns the identity of any customer of such financial services holding company, bank or insured depository institution; or (B) concerns any relationship arising from material extensions of credit or other material borrowings between any customer and such holding company, bank or insured depository institution.

This section further directs the SEC, as it deems necessary or appropriate in the public interest or for the protection of investors, to adopt rules or regulations to require specific policies or procedures reasonably designed to ensure compliance with the new subsection.

This section does not affect other laws governing the use of material nonpublic information, such as the prohibitions against insider trading. Thus, for example, although this section does not prohibit the exchange of all information that is nonpublic, it in no way legitimizes an otherwise impermissible use of that information to purchase or sell a security.

Section 474 (Removal of the Exclusion from the Definition of Investment Adviser for banks that Advise Investment Companies) amends section 202(a)(11)(A) of the Investment Advisers Act of 1940 (Advisers Act) to delete the current exclusion from the definition of "investment adviser" for a bank that serves as an investment adviser to a registered investment company. The amendment would also delete the exclusion from the definition for bank holding companies. This exclusion is not necessary and, to the Committee's knowledge, no bank holding company currently relies on this exclusion.

The current exclusion for banks continues to obtain, however if the SEC permits a bank to perform such services through a separately identifiable department or division ("SIP") of the bank. In such a case, the SIP and not the bank shall be deemed the investment adviser.

Section 202(a)(11)(A) defines a SIP as a unit that (i) is under the direct supervision of an officer or officers designated as responsible for the day-to-day conduct of the bank's investment adviser activities for an investment company or companies, including the supervision of all bank employees performing such activities; and (ii) separately maintains in the SID's facilities or can readily extract from the bank's facilities all records relating to such advisory activities, including for purposes of independent examinations of such records.

This deletion of the bank exclusion is intended to strengthen the SEC's ability to oversee the activities of registered investment companies. It is also intended to subject banks that advise investment companies to the Advisers Act restrictions on performance fees, as well as agency cross transactions and principal transactions.

Section 475 (Bank and Insurance Pooled Investment Vehicles) mandates a study of the exemptions for collective trust funds for retirement plans. Under present law, bank collective investment funds for retirement plans' assets are exempt from registration and regulation under the federal securities laws. As a result, investors who save for their retirement through bank collective investment funds are denied the protection contained in the Securities Act, the Exchange Act, and the Investment Company Act.

This section directs the SEC to report to Congress on its findings and conclusions (together with recommendations for any administrative or legislative action) with respect to (1) the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and ERISA and (2) the appropriate treatment of common trust funds under the securities laws. The SEC is directed to consult with the Secretary of Labor with respect to the first of these two issues.

Section 476 (Definition of Broker) amends the definition of "broker" in section 202(a)(3) of the Advisers Act to make it identical to the definition of "broker" in the Exchange Act, as amended by this legislation.

Section 477 (Definition of Dealer) amends the definition of "dealer" in section 202(a)(7) of the Advisors Act to make identical to the definition of "dealer" in the Exchange Act, as amended by this legislation.

Part III—Effective Date

Section 480 (Effective Date) provide that the amendments made by this chapter shall take effect on January 1, 1993.

CHAPTER 2—ADMINISTRATION OF SECURITIES LAWS WITH RESPECT TO SECURITIES OF DEPOSITORY INSTITUTIONS

Part I—Amendments to the Securities Act of 1933

Section 481 (Exemption to Permit Transition to Holding Company Structures) amends section 3(a)(9) of the Securities Act to facilitate the establishment of holding company structures as contemplated by this Act. Section 3(a)(9) currently exempts from the registration (but not the antifraud) provisions of the Securities Act securities exchanged by an issuer with its existing security holders exclusively where no commission or other remuneration is paid or given for soliciting the exchange. Section 483 amends section 3(a)(9) to add an exemption from the registration requirements of the Securities Act for certain securities issued or exchanged in the context of a reorganization of a corporation, including a bank, into a holding company. The exemption generally requires that, as part of the reorganization, the security holders exchange their securities of the corporation for securities of a newly-founded holding company with no significant assets other than the securities of the corporation and its subsidiaries, and that the security holders generally receive securities representing the same proportional interest in the holding company as they held in the corporation before the transaction. The rights and interests of the security holders in the holding company also must be substantially the same as those in the corpora-

tion before the transaction, and the holding company must have substantially the same assets and liabilities as the corporation had before the transaction. Those conditions are intended to ensure that the exemption is not used to transfer corporate control or substantially alter the proportional interests of shareholders without complying with the disclosure provisions of the Securities Act.

Part II—Report and Audit Requirements

Section 487(a)(Reports and Audit Requirements) amends the Exchange Act to create a new section 13A on fraud detection and disclosure in order to provide the SEC with timely notice of acts and conditions posing a material threat to the continued viability of an issuer. Section 13A(a) specifies certain procedures that must be included in each audit required by the Exchange Act of an issuer's financial statements. These include procedures designed to (1) detect illegal acts, (2) identify related party transactions that are material to the financial statements, and (3) evaluate whether there is substantial doubt about an issuer's ability to continue as a going concern. The SEC should consider the existing body of literature already used in the conduct of audits of financial statements and may utilize the procedures required by generally accepted auditing standards in these areas in prescribing by rule new procedures to implement the audit requirements under this section. Section 13A(b) provides that an independent public accountant who (1) becomes aware of an illegal act by his client issuer which affects the issuer's financial statements in a material manner and (2) finds that the issuer has not taken timely and appropriate remedial action after being so informed, must report that finding to the SEC if the issuer's board of directors fails to do so within one business day following its receipt of the accountant's report. The accountant maintains the option of resigning from the engagement and furnishing the SEC with a copy of its report. The SEC should consider the requirements under generally accepted auditing standards relative to illegal acts by clients in prescribing by rule new procedures to implement the auditor reporting requirements of this section. Subsection (c) provides that no independent public accountant shall be liable in any manner to any person for any finding, conclusion, report, or statement made in connection with subsection (b) of this section, including any rules promulgated pursuant thereto, if such finding, conclusion, report, or statement is made in good faith, based upon the independent public accountant's compliance with such subsections or rules (or both).

Section 487(b) (Effective Date) provides that as to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)), the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1992. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1993.

SUBTITLE C—GENERAL PROVISIONS

Sec. 491. Report on Resources For Implementation

This section requires the Chairman of the SEC and the Chairman of the Federal Reserve Board to submit to Congress on April 15, 1992, and annually for the next five years, a report that states whether or not the SEC or the Board, as the case may be, has the manpower, funding, and other resources to oversee the activities contemplated by this Act and enforce the safeguards and other legal requirements established by this Act. This report should identify, in reasonable detail, any deficiencies in such staffing, funding, or other resources, and the steps being taken to correct such deficiencies.

The repeal of provisions of the Glass-Steagall Act and the establishment of firewall safeguards to replace the prohibitions of that Act that are repealed is an historic step in the Nation's approach to the structure and functioning of its credit and capital allocation systems and the conduct of commercial and investment banking. The Congress is concerned that the SEC and the Board both identify and possess the staffing, funding, and other resources necessary to oversee the new banking structure and to promulgate and enforce such regulations as are required. It is intended that the submission of these reports will have the effect of prompting diligence on the part of the agencies in identifying their resource needs and of giving the Congress the basis for confidence that the firewall safeguards will function as intended. Moreover, the requirements for review by the President and for communication with Congress will ensure that this critical matter will be addressed by the highest level of the Administration and that priority will be given to it.

Sec. 492. Study of Effectiveness of Customer and Investor Protection Firewalls

This section requires the SEC and the Board to conduct a joint study of the limitations on activities of financial services holding companies and their affiliates imposed by this legislation to protect the government safety net, especially the deposit insurance fund, and to curb various abusive practices. A report shall be submitted to the Congress on the findings and conclusions of the SEC and the Board, together with any recommendations for legislative or administrative action.

Sec. 493. Securities Registration and Reporting Study

This section requires the SEC and the Board to conduct a study of the continuing need for, and operation of, sections 3(a)(2) and 3(a)(5) of the Securities Act of 1933 and section 12(i) of the Securities Exchange Act of 1934 in the light of changes in the organization and operation of insured depository institutions as a consequence of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

Section 3(a)(2) of the Securities Act currently exempts from the registration, but not the antifraud, provisions of the Act any security issued or guaranteed by a bank. Section 3(a)(5) currently exempts securities issued by various savings associations from the registration, but not the antifraud, provisions of the Act.

In 1964, section 12(i) of the Exchange Act transferred from the SEC to the Federal banking agencies the responsibility for administering and enforcing sections 12, 13, 14(a), 14(d), 14(f), and 16 of the Exchange Act with respect to those banks within those agencies' respective jurisdictions. Jurisdiction over thrift reporting was similarly transferred from the SEC to the Federal Home Loan Bank Board (now the Office of Thrift Supervision) in 1974. All other powers, duties, and functions, including antifraud enforcement, under the Act, with respect to those institutions, resides with the SEC. Section 12 requires registration of securities traded on national securities exchanges or issued by certain issuers. Section 13 requires filing of periodic and other reports concerning these securities and their issuers and filing of disclosure statements by certain beneficial owners of those securities and by issuers that repurchase their securities. Section 14(a), (c), and (f) impose certain disclosure and other requirements concerning solicitation of proxies with respect to those securities. Section 14(d) imposes certain disclosure and other requirements with respect to tender offers. Finally, section 16 requires filings with respect to certain acquisitions and sales of equity securities by officers, directors, and principal shareholders. Only approximately 700 institutions file such periodic reports with the appropriate Federal bank and thrift regulators.

While the Administration's proposal called for repeal of these exemptions and said transfers, H.R. 6 does not repeal sections 3(a)(2), 3(a)(5), and 12(i). The study mandated by this section requires the SEC and the Board to analyze (I) any reduction in the number of insured depository institutions to which such section 12(i) applies as a result of enactment of this Act; (2) the costs of continuing to have separate administration and enforcement of reporting and disclosure provisions under the authority of such section 12(i); (3) any deviations in the regulations prescribed to enforce such reporting and disclosure requirements; (4) any resultant differences in enforcement or accounting practices and their impact; (5) the types of bank securities exempted under sections 3(a)(2) and 3(a)(5) and any related investor protection issues; and (6) such other factors as the SEC and the Board consider to be relevant to the consideration of whether to repeal or significantly amend such sections. A report on the study conducted under subsection (a) shall be submitted to Congress not later than January 1, 1995. The report shall include, in addition to a discussion of each of the issues required to be analyzed under subsection (a), such recommendations for legislation as the SEC and the Board consider appropriate.

The CHAIRMAN. Under the rule, the Committee rises.

□ 1830

Accordingly the Committee rose, and the Speaker pro tempore (Mr. HOYER) having assumed the chair, Mr. CARR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, pursuant to House Resolution 266, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. WYLIE

Mr. WYLIE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. WYLIE. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. WYLIE of Ohio moves to recommit the bill, H.R. 6, to the Committee on Banking, Finance and Urban Affairs with instructions to report the same to the House forthwith with the following amendment:

Page 213, beginning on line 1, strike title IV through page 426, line 9, and insert the following new title (and conform the table of contents accordingly):

TITLE IV—BANK INSURANCE REFORM

SEC. 401. DELAWARE LOOPHOLE CLOSER.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by redesignating section 12 as section 13 and inserting after section 11 the following new section:

"SEC. 12. INSURANCE ACTIVITIES OF BANK SUBSIDIARIES OF HOLDING COMPANIES.

"(a) IN GENERAL.—No bank holding company may permit any bank subsidiary of such company, or any subsidiary of such bank, to provide insurance as a principal, agent, or broker beyond the borders of the State in which the subsidiary bank is chartered unless such insurance activities in the nonchartering State are specifically authorized by the statutes of that State, by language to that effect and not merely by implication.

"(b) CONTINUATION OF PRIOR ACTIVITIES.—Notwithstanding subparagraph (A) of section 4(i)(5), any bank holding company (or any successor of such company), or any bank subsidiary of a bank holding company (and any subsidiary of any such bank subsidiary) may continue insurance activities otherwise prohibited by subparagraph (A) on an interstate basis—

"(1) so long as those coverages insure against the same types of risks, or are otherwise functionally equivalent to, coverages provided on or before June 1, 1991;

"(2) to the extent that those activities were lawful and not the subject of legal challenge on that date; and

"(3) subject to State regulation and control.".

SEC. 402. TOWN OF 5,000 LOOPHOLE CLOSER.

(a) IN GENERAL.—Chapter 1 of title LXII of the Revised Statutes is amended by inserting after section 5136A (12 U.S.C. 25a) the following new section:

"SEC. 5136B. LIMITED INSURANCE ACTIVITIES FOR NATIONAL BANKS.

"(a) LIMITED INSURANCE ACTIVITIES FOR NATIONAL BANKS LOCATED IN SMALL TOWNS.—In addition to the powers now vested by law in national banks organized under the laws of the United States, any national bank that is located in a place that has a population not exceeding 5,000 (as shown by the preceding decennial census) may engage in insurance sales and insurance solicitation activities if—

"(1) the sales and solicitation activities are confined to that place of 5,000 or less and the adjacent rural unincorporated areas closest to that place; and

"(2) the insurance is sold only to—

"(A) individuals who are residents of, or are employed in, any place (including any unincorporated rural area) in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census);

"(B) persons—

"(i) who are engaged in business in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census) and have a principal business office in any such place; or

"(ii) whose principal headquarters if located in any such place,

with respect to employees (including owner-employees) who reside in or are principally employed in such place, real property located in such place, personal property which is principally used in such place, or services provided by persons located in such place; and

"(C) any other person if the insurance is issued with respect to—

"(i) real property located in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census); or

"(ii) personal property which is principally used in such place.

"(b) CERTAIN ACTIVITIES PROHIBITED IN CONNECTION WITH INSURANCE ACTIVITIES.—No national bank which sells insurance pursuant to subsection (a) may—

"(1) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

"(2) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

"(c) LIMITATION ON TITLE INSURANCE ACTIVITIES.—No national bank may engage, directly or through a subsidiary, in any activity involving the underwriting or sale of title insurance other than title insurance agency activities in which such bank was actively and lawfully engaged, directly or, through a subsidiary, as of June 1, 1991.".

(b) REPEAL.—

(1) IN GENERAL.—To the extent the paragraph described in paragraph (2) is in effect on the day before the date of the enactment of this Act (whether as a paragraph of the Act described in such paragraph or as a provision of any other law), such paragraph shall cease to be effective as of such date of enactment.

(2) PARAGRAPH DESCRIBED.—The paragraph described in this paragraph is the paragraph contained in the Act entitled "An Act to amend certain sections of the Act entitled 'Federal Reserve Act' approved December twenty-third, nineteen hundred and thirteen" and approved September 7, 1916 (39 Stat. 753; omitted from the United States Code) which—

(A) relates to the authority of national banks in small communities to act as insurance agents and real estate brokers; and

(B) begins "That in addition to the powers now vested by law in national banking associations".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes is amended by inserting after the item relating to section 5136A the following new item:

"513B. Limited insurance activities for national banks.".

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. WYLIE] is recognized for 5 minutes in support of his motion to recommit.

Is there a Member opposed?

Mr. GEPHARDT. I am opposed to the motion, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. GEPHARDT] will be recognized for 5 minutes in opposition to the motion to recommit.

The Chair recognizes the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, there is much good in this bill. We have bank insurance fund recapitalization, we have accounting reform, we have early intervention, we have the end of the too-big-to-fail doctrine, we have foreign bank supervision a la BCCI, we have a CRA study, we have the Bank Enterprise Act, and we have nationwide banking.

However, Mr. Speaker, I offer my motion to recommit basically because the bill has been dragged down by what I regard as an ill-conceived agreement negotiated by two powerful chairmen. No other members of the committees on either side of the aisle, and no other Members of the House, were consulted on the Dingell-Gonzalez amendment. I think the Dingell-Gonzalez amendment does much mischief to banking legislation as we now know it.

Mr. Speaker, the Committee on Rules refused to make in order any amendments to address the administration's severe concerns with respect to title 4.

My amendment, simply stated then, would preserve all of the bill, expressing the will of the House, with the exception of title 4 and including a so-called Hayes amendment. I urge adoption of my motion to recommit.

Mr. Speaker, I yield to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding.

Mr. Speaker, I rise in strong support of the motion to recommit offered by the gentleman from Ohio [Mr. WYLIE].

During our consideration of this legislation last Thursday, I indicated in my statement that the Hayes amendment on insurance would be part of the motion to recommit. That is the case. The entire text of the Hayes amendment as proposed at the request of the insurance agents is included in this motion as the same as is now included in title IV of the Gonzalez-Dingell compromise.

Specifically, this amendment seeks to prevent banks from engaging in unlimited insurance activities beyond a State's borders without the legislative authorization of each individual State. It also serves to correctly clarify congressional intent regarding the geographic scope of a national bank's ability to sell insurance from a town of 5,000.

Mr. Speaker, I urge my colleagues to support this motion.

Mr. WYLIE. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Speaker, I rise in opposition to the motion to recommit because it is the only way to protect an amendment of this gentleman requiring a commercial bank to reach and maintain a 5-percent tier on capital before such a bank can enter the securities arena.

Here, I would like to stress that the Energy and Commerce Committee properly and wisely knocked out the Banking Committee's approach in title IV to authorize the melding of commerce and banking. It also attempted, properly, to establish appropriate firewalls between the securities and banking functions of a commercial bank. This gentleman, however, had doubts that a draft of a compromise crafted by two chairmen, without the input of any Member of the minority, without public comment on a draft presented to this body 2 days before amendments could be crafted, was likely to reflect either the public interest or the exact intent of those who brought it before this body.

Accordingly in a previous procedural motion which failed, I opted to vote to delete title IV. On this vote I am reversing my earlier judgment, partly, as mentioned above to protect the new capital standard established, partly to see that certain firewall approaches are dealt with in conference. But I must stress I believe the Energy and Commerce Committee may well have gone too far.

Because of the claims and counterclaims presented on this floor and in "Dear Colleague" letters and because of the nuances of purpose, I am enclosing below an analysis of a distinguished law firm which takes to task the Energy and Commerce position. The firm, having prepared the analysis at the behest of a major American bank, is not a disinterested party. Nonetheless, I think it important the perspective below be understood and, if this bill goes to conference, be addressed.

LAW FIRM ANALYSIS

Presumed Myth: "Banks must create a holding company and move all their securities activities into a holding company subsidiary.

Presumed Fact: "Banks do not have to create holding companies. Securities activities can be moved out of the bank into a subsidiary of the bank."

In actuality, section 403 of the compromise clearly states that "a financial services holding company which controls or acquires control of a securities affiliate shall not permit an insured depository institution subsidiary of such company to operate as a broker or dealer that is required to register under the Securities Exchange Act of 1934." Subsequently in section 432, which amends paragraph 7 of section 5136 of the Revised Statutes (12 U.S.C. 24(7)), the bill clearly states that "No subsidiary of a national bank may engage in any activity in which a national bank may not engage."

These activities preclude a national bank from having a subsidiary which engages in securities activities in which the bank itself may not engage.

Presumed Myth: "Banks cannot sell municipal securities any more."

Presumed fact: "Banks can sell municipal securities."

In actuality, section 403 of the compromise clearly states: "A financial services holding company which controls or acquires control of a securities affiliate shall—

(A) not permit, after the end of the 1-year period beginning on the date of the acquisition, an insured depository institution subsidiary of such company to underwrite or deal in obligations issued by any State or any political subdivision of any State; and

(b) permit the activities described in subparagraph (A) to be conducted only by a securities affiliate. . ."

Combined with section 451 of the bill, which revises the definition of "broker" under the Securities Act of 1933, and which would essentially prohibit banks from brokering securities, banks would be unable to underwrite, deal in, or sell municipal securities.

Presumed Myth: "A bank cannot offer a mutual fund that includes shares of a company to which the bank has loaned money."

Presumed Fact: "A mutual fund affiliated with a bank can't buy shares of a company (during the underwriting period) to which the bank has loaned money only if the proceeds of the sale of the shares will be used to pay off a loan to the bank."

In actuality, section 462 of the bill would permit the SEC to designate any person or class of persons as "affiliated persons" of an investment company by reason of having had, at any time since the beginning of the last 2 fiscal years of the investment company, a material business or professional relationship with the investment company or with a principal underwriter for, or promoter or sponsor of, the company. A material business or professional relationship is one that arises from material extensions of credit or other material borrowing as the SEC determines. That provision could prohibit a bank from maintaining any type of lending or other banking relationship with a corporation in whose securities an affiliated mutual fund invests. Alternatively, it could prohibit a mutual fund from investing in securities of any entity which maintains any type of lending or other relationship with an affiliated bank. Not only is such a prohibition unwarranted from a safety and soundness standpoint, it is patently unfair to both the borrower and its bank.

Supposed Myth: "A bank or an affiliate cannot sell an uninsured instrument without a disclosure to and acknowledgement by the customer that the instrument is not insured. Registered brokers and dealers are exempt."

Supposed Fact: "Disclosure and acknowledgement of uninsured status required by H.R. 6 and the compromise. Registered brokers and dealers must comply with thorough SEC disclosure requirements."

In actuality, Section 434 of the bill requires that when a transaction involves an instrument or other transaction not constituting an insured deposit, a bank or a securities affiliate must obtain from the customer a signed statement containing specific disclosures (that the product is not an insured deposit) before the completion of the transaction. This requirement would effectively eliminate the sale of uninsured products by banks and their affiliates and cut off states, municipalities, and the federal government from a major source of funds. Furthermore, customers would lose a valued and convenient service. The bill would essentially require the customer to come into the bank to conduct business that is normally conducted by telephone and the mails. Indeed, even a check deposited by mail into an account with over $100,000 would have to be rejected because of the inability to obtain prior signed acknowledgement.

Presumed Myth: "Banks may not sell proprietary mutual funds in their lobbies.'

Presumed Fact: "The compromise permits such sales to continue in the bank lobby by registered-broker dealers that can be bank affiliates and that are subject to SEC investor protection rules."

In actuality, Section 466 of the bill specifically states: "It shall be deceptive and misleading for any registered investment company which has as an investment adviser or distributor, a bank, or an insured depository institution (as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) or affiliated person thereof, to adopt, as part of the name, title, or logo of such company, or of any security of which it is the issuer, any word or design which is the same as or similar to, or a variation of, the name, title, or logo of such bank or insured depository institution."

Thus, if one of the common precepts of a "proprietary mutual fund" is to be able to identify with the affiliated institution, the bill clearly prohibits it. Furthermore, the statement that sales are permitted in a bank lobby by registered broker/dealers overlooks the fact that interlocking *nonmanagement* employees between a bank and its securities affiliate are prohibited by the bill, even if the employees are registered broker/dealers subject to all of the NASD and SEC regulations (including the requirement that they only sell appropriate investments to their customers).

Presumed Myth: "The Banking Committee accepted all the Energy and Commerce firewalls."

Presumed Fact: "The Energy and Commerce Committee accepted all Banking Committee firewalls and added two additional firewall protections."

This statement apparently refers only to the firewalls contained in the proposed new subsection (n) to section 4 of the Bank Holding Company Act. In fact, the Energy and Commerce Committee added substantially more onerous provisions, even if not labeled "firewalls". For example:

1. The Energy and Commerce Committee amended the definition of "broker" under the Securities Act of 1933, which would effectively prohibit banks from engaging in most existing brokerage activities, except through an affiliated securities affiliate. That language effectively negates prior language in the bill authorizing banks to continue engaging in activities permissible before enactment of the bill. The language substantially increases the cost not only for purchasers of certain securities but also for issuers such as states and municipalities with no offsetting benefits.

2. The Energy and Commerce Committee added a significant new twist to the firewalls included in H.R. 6. In effect, it requires both the Federal Reserve and the SEC to concur on any proposed modifications to the firewalls. This is accomplished in section 455 of Title IV by amending the securities laws to make the firewalls reciprocally applicable to securities affiliates. For example, under the amendments to the Bank Holding Company Act, a bank generally may not extend credit to its securities affiliate. Under the reciprocal amendment to the securities laws, securities affiliates also may not accept such credit under the same circumstances. The Federal Reserve's authority to modify the firewalls extends only over banks and the financial services holding companies. The SEC is given similar authority to modify the firewalls with respect to securities affiliates.

Such a provision is not only legislative overkill, it effectively sets the legislative firewalls, which are designed to protect the insured depository institution affiliate, in stone. The only purposes for such reciprocal provisions is to provide the SEC with regulatory control over the lending activities of financial service holding companies and their subsidiary banks, and ultimately to ensure that the firewalls are not modified by Federal regulators.

3. The Energy and Commerce Committee added a provision to Title IV which would prohibit a bank from extending or denying credit or services, or varying the terms and conditions, if the effect would be to treat an unaffiliated entity less favorably than any affiliate of the bank, including *all bank subsidiaries*. The provision would also require banks, upon certain findings by the Federal Reserve, to offer to unaffiliated brokers and dealers in the U.S. government securities clearing services at "reasonable" prices, terms, and conditions, *regardless of the cost to the bank or the price, terms, or conditions the bank may charge or impose on its own securities affiliate.*

Section 23B of the Federal Reserve Act already prevents a bank from offering its non-bank affiliates services on any prices, terms, or conditions that are more favorable than those which are offered to unaffiliated third parties; and therefore, the provision is unnecessary from the standpoint of non-bank affiliates (such as securities affiliates). A bank, however, should not be prohibited from offering special pricing or terms to its own bank subsidiaries. Such a subsidiary is nothing more than a separately incorporated department of the bank, doing that which the bank itself can do. Congress would not attempt to regulate how a bank, or any other entity, charges on an internal basis for services provided to itself; but attempting to regulate pricing to bank subsidiaries amounts to the same thing.

It is the intention of this Member to support the bill on final passage. The administration's vision of an America in which large banks controlled by large corporations in an unfettered way are allowed to cross State lines and undertake securities activities is not mine. I prefer decentralized banking, total barriers to integrating banking and commerce, and reasonable firewalls between banking and securities activities.

I cannot stress enough that tough capital standards are key to prudential banking that a narrow approach is a prescription for a regulatory licentiousness. Hence, as much as I assume Energy and Commerce overstepped in attempting to protect the securities industry I feel compelled to support the bill.

It is simply more likely, in my judgment, that a more thoughtful House-Senate compromise can be crafted by paring back a comprehensive bill than negotiating from a narrow approach.

Mr. WYLIE. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding this time to me.

Mr. Speaker, in a moment we will be certainly asked to use our good wisdom with passionate entreaty to adopt this bill now reported to the House floor, and there is no vice in passionate wisdom in doing one's job, but it is wrong when one does not listen to the sound voice of reason.

Mr. Speaker, reason tells each Member of the House that what we have done here is not in anyone's best interest. The phones in our offices ring off the wall as small insurance companies fight large, as small banks fight large, as securities agents, real estate firms and everyone faces uncertainty in what this legislation will do to the financial marketplace.

Let us not be confused. This legislation will do for the financial marketplace what the *Hindenburg* does for air travel. It is a disaster, and we should not turn our backs simply because we are afraid of having to come back, and do it right and vote for this travesty without giving ourselves adequate and responsible opportunity to do it correctly.

If this motion should fail, please do not vote for this bill on final passage.

Mr. WYLIE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Speaker, I rise in strong support of an attempt to save the *Hindenburg* by passing the recommittal motion.

By recommitting this legislation it means that we might have a chance to allow the committee process to work, wouldn't it be interesting to see how the Banking and the Energy and Commerce Committees vote? They haven't. By recommitting this bill will give them the chance.

Mr. WYLIE. Mr. Speaker, I yield the remainder of my time to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding this time to me.

Mr. Speaker, I think the important thing for us to remember about this motion to recommit and why it needs to be passed is it can make a good bill out of this. It will keep the whole bill intact except for title IV, which we had such a huge debate on striking the other day, but it keeps the guts of title IV's provisions on insurance. It does close the Delaware loophole. It does close the other loopholes of concern to the title insurance folks and others. It is a good bill from the insurance community standpoint with this motion to recommit passed, and it is a good bill for all of us who do not want to have to deal with unduly restricting banks.

Let us pass the motion to recommit, take the insurance provisions and put them in there, and strike everything else out of title IV. Vote aye on the motion to recommit, but, if it fails, vote no on the bill, but, if it passes, it is a good bill, and we ought to pass it. That will solve the problem.

The SPEAKER pro tempore. All time for the proponents of the motion to recommit has expired.

The Chair recognizes the majority leader, the gentleman from Missouri [Mr. GEPHARDT], for 5 minutes.

Mr. GEPHARDT. Mr. Speaker, Members of the House, I hope that Members will not vote for the motion to recommit and will vote for this legislation.

We have worked in committee for almost 10 months. We have worked on the floor now for 3 days. We cannot leave this session of the Congress this year until and unless we pass a bill in this area that at least recapitalizes the banking fund. If this bill fails tonight, we will have to stay here, go back to committee, try to bring out a bill that we can pass before we can leave this year.

I say to my colleagues, "If you vote for the motion to recommit, you vote to overturn what we said we wanted to do the other day, which was to pass the Dingell-Gonzalez compromise, which we all read, and understood and voted for by a majority vote, Republicans and Democrats, a few days ago."

□ 1840

This is a good bill. It is complicated. It undoubtedly could be improved. It undoubtedly will be improved in a conference with the Senate. The President can then look at that product and decide whether he wants to sign it or veto it. Then we will have to take that decision and see what we want to do from there. But for the life of me, I do not know why we would want to go back with a motion to recommit or, worse, defeat the bill tonight and go back to where we were 4 days ago or 6 months ago.

We hear a lot about what this lobby wants and what that lobby wants. Let us forget the lobbies and start thinking about what is good for the American people and the American taxpayers for a change. People are saying that if we vote for the motion to recommit, it will make the insurance lobby happy. Others say that if we defeat the bill, we will bring back a stripped-down bill, put in interstate banking, and that will keep the banking lobby happy, or if we do something else, it will make the securities dealers happy.

I say the heck with all of them. I say that we should just worry about the people who pay the taxes, the 70 billion taxpayer dollars that are going to go into this fund.

Let us remember what this is about. I was here in 1980. I voted for the Garn-St Germain compromise late at night. We revised and reformed the savings and loan industry. We opened up the insurance from $20,000 to $100,000, and with too-big-to-fail we went to unlimited insurance and we gave them new powers. Now in a few weeks we will take up another $80 billion for the RTC because of the decisions we made on the savings and loans in 1980.

It is now 1991, and we are now making the same decisions with regard to the banks. I beg the Members to consider when we make this decision—and I hope we will make it tonight—that if

we are going to have this unlimited insurance and continue it as we are, we will take precautions so that we do not wind up with the banks being in the same condition as the savings and loans 1 year from now or 5 years from now or 10 years from now.

We have a responsibility to our people to recapitalize this fund and not to open it up and allow the same mistakes to be made. So I urge the Members to vote against this motion to recommit and stick with the decision we made 3 or 4 days ago.

Mr. Speaker, let us pass this bill over to the Senate and go to a conference and see if we can improve this bill and do what is right. Let us put the money in the fund, but let us reform the system so that the problem does not occur again.

The SPEAKER pro tempore (Mr. HOYER). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYLIE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 160, noes 253, answered "present" 1, not voting 19, as follows:

[Roll No. 374]

AYES—160

Allard
Archer
Armey
Aspin
Baker
Ballenger
Barnard
Barrett
Bateman
Bereuter
Bilirakis
Bliley
Boehlert
Boehner
Broomfield
Bunning
Burton
Callahan
Camp
Campbell (CA)
Chandler
Clement
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Crane
Cunningham
Davis
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Emerson
Erdreich
Ewing
Fawell
Fields
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Hoagland
Hobson
Holloway
Horton
Houghton
Hubbard
Hunter
Hyde
Inhofe
Ireland
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McMillan (NC)
Meyers
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison
Myers
Neal (NC)
Nichols
Nussle
Oxley
Packard
Paxon
Petri
Porter
Pursell
Quillen
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Santorum
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stearns
Stump
Sundquist
Tallon
Taylor (NC)
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff

NOES—253

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Atkins
AuCoin
Bacchus
Barton
Beilenson
Bennett
Bentley
Berman
Bevill
Bilbray
Bonior
Borski
Boucher
Boxer
Brewster
Brooks
Browder
Brown
Bruce
Bustamante
Byron
Cardin
Carper
Carr
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Engel
English
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Ford (MI)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Gordon
Guarini
Hall (OH)
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Herger
Hertel
Hochbrueckner
Horn
Hoyer
Huckaby
Hughes
Hutto
Jacobs
Jefferson
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moran
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Ray
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Roukema
Rowland
Roybal
Russo
Sabo
Sanders
Sarpalius
Savage
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Solarz
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Walsh
Washington
Waters
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—19

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McEwen
Michel
Moody
Mrazek
Murphy
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

□ 1901

Mr. LEWIS of California changed his vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HOYER). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GONZALEZ. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 89, nays 324, answered "present" 2, not voting 18 as follows:

[Roll No. 375]

YEAS—89

Abercrombie
Annunzio
Atkins
Beilenson
Berman
Bonior
Borski
Boucher
Bruce
Collins (IL)
Collins (MI)
Coyne
DeLauro
Dingell
Donnelly
Downey
Dymally
Early
Eckart
Edwards (CA)
Fascell
Fazio
Frost
Gekas
Gephardt
Gibbons
Glickman
Gonzalez
Hayes (IL)
Hertel
Hochbrueckner
Hoyer
Jacobs
Johnston
Jones (GA)
Kennelly
Kildee
Kleczka
Kostmayer
Lancaster
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Lewis (GA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Matsui
Mavroules
Meyers
Mink
Moakley
Moody
Moran
Neal (MA)
Oakar
Olver
Ortiz
Panetta
Pease
Pelosi
Penny
Pickle
Reed
Roukema
Roybal
Sabo
Sawyer
Scheuer
Schroeder
Schumer
Sikorski
Slattery
Solarz
Studds
Synar
Torres
Towns
Traxler
Vento
Walsh
Waxman
Weiss
Wolpe
Wyden
Yates

NAYS—324

Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Boxer
Brewster
Broomfield
Browder
Brown
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)

Combest
Condit
Conyers
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
Dickinson
Dicks
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Durbin
Edwards (OK)
Edwards (TX)
Emerson
Engel
English
Erdreich
Espy
Evans
Ewing
Fawell
Feighan
Fields
Fish
Flake
Ford (MI)
Frank (MA)
Franks (CT)
Gallegly
Gallo
Gaydos
Gejdenson
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Holloway
Horn
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Klug
Kolbe
Kolter
Kopetski
Kyl
LaFalce
Lagomarsino
Lantos
LaRocco
Laughlin
Lent
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Marlenee
Martin
Martinez
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Oberstar
Obey
Olin
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Parker
Pastor
Patterson
Paxon
Payne (NJ)
Payne (VA)
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Rowland
Russo
Sanders
Santorum
Sarpalius
Savage
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Stump
Sundquist
Swett
Swift
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torricelli
Traficant
Unsoeld
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Washington
Waters
Weber
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—18

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McEwen
Michel
Mrazek
Murphy
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

□ 1918

The Clerk announced the following pair:

On this vote:

Mr. Smith of Florida for, with Mr. Murphy against.

So the bill was not passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. DANNEMEYER. Mr. Speaker, I was unavoidably absent from the House. Had I been present I would have voted "aye" on rollcall Nos. 367, 371, 372, and 374 and "nay" on rollcall Nos. 368, 369, 370, 373, and 375.

PRIVILEGES OF THE HOUSE—USE OF HOUSE RESOURCES BY HOUSE COUNSEL TO PREPARE LEGAL BRIEF ON CONSTITUTIONALITY OF TERM LIMITS

Mr. COX of California. Mr. Speaker, I rise to a question of the privileges of the House, and I send to the desk a privileged resolution (H. Res. 268) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Whereas, Rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively, or the integrity of its proceedings, are affected; and,

Whereas, under the precedents, customs, and traditions of the House pursuant to Rule IX, a question of privilege has arisen in cases involving the actions of officers and employees of the House, including the use of the House of Representatives legal counsel to represent individual Members or the House collectively, where such representation could reflect upon the House as a whole; and,

Whereas, the rights of the House collectively are affected directly by the House of Representatives' legal counsel preparing a formal legal brief arguing the unconstitutionality of Congressional term limits; and,

Whereas, the rights and the reputation of all Members of the House of Representatives are directly affected by the House of Representatives legal counsel preparing such a legal brief, which could be understood to imply the support of the House of Representatives and its membership (or at least a majority thereof) for the positions taken therein; and

Whereas, no vote of the Members of the House has occurred on any resolution or bill, authorizing the House of Representatives' counsel to prepare a legal brief for or against the constitutionality of term limits; and,

Whereas, the decision by the House of Representatives' counsel to use the funds and resources of the House to prepare arguments against the constitutionality of term limits—without any formal or informal vote of the Members—subjects the House collectively, and each of its Members, to legitimate question concerning the integrity of House proceedings; and,

Whereas, the use of official House resources to prepare a legal brief for an individual Member in a case where he is not a party, but where instead he has personal political interest, could subject Members, in their representative capacity, to ridicule and contempt; and

Whereas, the constitutionality of state-imposed term limits for Members of Congress is an open question, undecided by our legal system, and on which reasonable persons can differ;

Resolved, That the Clerk of the House shall take all necessary steps to notify interested parties, including the Florida Supreme Court, that the House of Representatives regrets that official resources were used to prepare a brief against the constitutionality of State-imposed term limitations for Members of Congress, and that the House has no official or unofficial position thereon.

The SPEAKER pro tempore (Mr. HOYER). The resolution constitutes a question of the privileges of the House.

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that further debate on this resolution and a possible vote on the resolution be deferred until the first order of business on Wednesday of this week.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. COX of California. Mr. Speaker, reserving the right to object, I have had the opportunity to discuss this question with the distinguished majority leader. I appreciate his request for unanimous consent, and I agree that it is in the best interests of all Members of the House so that we may have a full and fair debate on the question and a vote at a time when Members find it more convenient. As a result, I concur in the request for unanimous consent and urge my fellow Members to do likewise.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. ECKART. Mr. Speaker, reserving the right to object, could I inquire as to whether or not any effort has been made to secure the efforts of the House counsel to prepare a brief in support of the term-limit initiative?

Mr. COX of California. Mr. Speaker, will the gentleman yield?

Mr. ECKART. Further reserving the right to object, I yield to the gentleman from California.

Mr. COX of California. This Member has made no such efforts. I am aware, however, that a letter has been sent to the Clerk of the House of Representatives asking that that be done. It is not the tenor nor the intent of the resolution I have brought before the House to do so.

Mr. ECKART. Further reserving the right to object, Mr. Speaker, it in no way would force the House to take a

position or the counsel to take a position in support or opposition to the initiative, but it is merely the seeking of legal advice of the counsel for Members individually? Is that the gentleman's understanding?

Mr. COX of California. If the gentleman will yield further, Mr. Speaker, my purpose in offering this resolution is to take a position as a body that, frankly, we have no position, that this is an open legal question, that it ought to be left to the decision by the courts.

Mr. ECKART. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT TUESDAY, NOVEMBER 5, 1991, TO FILE CONFERENCE REPORT ON H.R. 2100, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until midnight, Tuesday, November 5, to file a conference report on H.R. 2100 as amended, the National Defense Authorization Act for fiscal year 1992.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 323

Mr. GOSS. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of House Joint Resolution 323. My name was placed thereon in error.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE OCTOBER SURPRISE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. LIVINGSTON] is recognized for 5 minutes.

Mr. LIVINGSTON. Mr. Speaker, congressional Democrats owe Ronald Reagan and George Bush and the American people an apology.

When it comes to ethics, the Democrat Party has selective moral outrage. They are unconcerned that John Kennedy might have schemed with Chicago and Texas politicians to steal the 1960 Presidential election. They do not ask how Lyndon Johnson, who was born into poverty and spent a career in public service, managed to retire as a multimillionaire.

But when the topic turns to Republicans in general and Ronald Reagan in particular, suddenly these Democrats make Cotton Mather look like Hugh Hefner.

□ 1930

Take their latest gimmick, the so-called October surprise investigation, which has been featured in newspaper articles and TV news shows extensively over the last 6 months.

Mr. Speaker, you know the October surprise. It was an idea that in 1980 Reagan campaign aids, including one person who is now a Federal judge on the D.C. Court of Appeals, secretly conspired with the ayatollah to delay release of U.S. hostages until after the election. Then according to this scenario, President Reagan agreed to divert arms and spare parts to the ayatollah.

Mr. Speaker, the basis for this article of faith among so many Democrats is the contention by Gary Sick, a disgruntled Carter administration adviser, now proven in articles in the New Republic and Newsweek to be mythical at best, and at worst a crock of horse feathers.

Sick says in a recent New York Times article that for a long time he himself doubted the October surprise scenario. Yet he claims he heard so much evidence in support of it from so many people that suddenly he is now convinced it is true.

Well, the facts tell a different story. In fact, Gary Sick is not some longtime doubter of this scenario. He has been pedaling the October surprise story, as well as his soul-searching conversion, for 3 years. He tried doing it during the final weeks of the 1988 Presidential campaign as a way of killing off the Bush campaign. It did not work then and it is even less credible today, despite the intent of the Democrats to begin investigations of his story in both Houses.

Sick claims George Bush was in Paris at the height of the 1980 campaign. He says he has witnesses to this; but looking at the facts you find that not only do all his witnesses turn out to be crackpots, felons, or pathological liars, but all the travel logs and the Secret Service files show that George Bush never left American shores.

One of the people Sick relies upon is Abolhassan Bani-Sadr, the former Iranian leader who was driven into exile in the early 1980's. Yet Bani-Sadr, a liar of the highest order, for the first decade of his exile never mentioned the October surprise. It was only when he decided to write and sell his memoirs that he decided to proclaim that George Bush was in Paris during October 1980, to deal arms for hostages; and yet, Mr. Speaker, we know now that it never happened.

Gary Sick was grilled on ABC's "Nightline" the day his story appeared. Ted Koppel put it to Sick in no uncertain terms. He said:

> I must tell you, I read with great interest and care your op-ed piece in the New York Times this morning. You don't have it. You make a number of allegations, a number of sources, most of them anonymous. It does not seem to me as though you've got an ironclad case.

Sick responded,

> It was not possible to list all the sources by name and background in a piece that size, and if you're talking about hard documentary evidence, you're absolutely right. It just isn't there in hard document form.

Well, of course it is not, Mr. Speaker, because no evidence exists; but the facts do tell us that Zbigniew Brzeinski in his memoirs as President Carter's own National Security Adviser writes:

> The outbreak of the Iran-Iraq war created in Iran a need for American spare parts and we began to hold out that option as a way of enticing the Iranians into a prompt settlement. By the middle of October, we were even discussing among ourselves

That is, the Carter administration—

> the possibility of pre-positioning some of those spare parts in Germany, Algeria, or Pakistan so that the Iranians could then promptly pick them up with their own aircraft.

So, Mr. Speaker, if you are going to conduct an investigation, note that it was the Carter people, not the Reagan people, who were talking about swapping arms for hostages.

Now, Mr. Speaker, this is typical of the intellectual bankruptcy of today's Democratic Party, always blaming someone else for their problems.

But it is their fault. They have held power in this Chamber uninterrupted for nearly four decades. They are the ones who refuse to curb Government spending, or roll back the scale of Government spending. They continue to write restrictive rules that prohibit full and fair and open debate here on the House floor, and it is they who are pushing a phony partisan investigation. It is no wonder that the American people do not trust Congress or do not trust the Democrats.

Even worse, Mr. Speaker, they may be right. Even more so now that we understand that the October surprise is a fraud and a hoax. Do not take my word for it. Read the New Republic and the Newsweek articles, and when you are through, Mr. Speaker, you can apologize to Ronald Reagan, George Bush, and the American people.

Mr. Speaker, I include the following article:

[From the New Republic]

THE CONSPIRACY THAT WASN'T

(By Steven Emerson and Jesse Furman)

Few op-ed pieces prove to be as popular or long-lived as the one Gary Sick wrote for The New York Times last April. He claimed that in October 1980 officials in Ronald Reagan's presidential campaign made a secret deal with Iran to delay the release of the American hostages until after the election. In return, the United States purportedly ar-

ranged for Israel to ship weapons to Iran. The charges of an "October Surprise" weren't new. They had been circulating in the press since 1987. But Sick, who had served on Jimmy Carter's National Security Council staff and is the author of the acclaimed All Fall Down (1985), an account of the 1980 Iran hostage crisis, gave new impetus to the story. So did a show the following day by PBS's "Frontline," in which Sick was featured.

When Sick first wrote about the release of the hostages in his book, he explained that there were several reasons they were freed in January 1981: Iranian enmity for Carter, the complications of unfreeing Iranian assets, the disorganization of the Iranian regime, and the protracted nature of U.S.-Iranian negotiations. But in his oped piece, Sick wrote that in preparation for a new book on Iran, October Surprise (to be published this month), he interviewed "hundreds of people" who told him about a secret Reagan-Bush hostage deal in 1980. What finally persuaded him was "the absence of contradictions on the key elements of the story" provided by his sources. Sick became convinced that William Casey, then Reagan's campaign manager, had met secretly in Madrid in the summer of 1980 with Iranian intermediaries to negotiate a secret deal, and that Casey and other officials met in Paris in October 1980, after which Iran broke off negotiations with the Carter administration. Sick also wrote that three of his sources saw then Vice President George Bush in Paris as well, but that "in the absence of further information, I have not made up my mind about this allegation."

The Sick piece and the "Frontline" story prompted a spate of alarmed editorials, an indignant request from former President Carter for a "blue-ribbon panel" to investigate the charges, and congressional inquiries into the October Surprise.

But the truth is, the conspiracy as currently postulated is a total fabrication. None of the evidence cited to support the October Surprise stands up to scrutiny. The key sources on whose word the story rests are documented frauds and imposters. Representing themselves as intelligence operatives, they have concocted allegations that are demonstrably false, and their stories, full of internal inconsistencies, are also contradictory. Almost every primary source cited by Sick or "Frontline" has been indicted or was the subject of a federal investigation prior to claiming to be a "participant" in the October Surprise. Finally, evidence we have uncovered shows that William Casey and George Bush could not have been present at the meetings alleged by the sources.

The term "October Surprise" was actually coined by Reagan campaign aides who worried in the fall of 1980 that Carter would launch an operation to free the hostages in order to win the election. Thus in the fall of 1980 members of the Reagan campaign team often met to discuss developments regarding the hostages. There was concern that Carter would do something to exploit the hostage situation, and some of the things the Republicans did—such as stealing Carter's debate book—were sleazy. But they certainly did not amount to treason, as proponents of the October Surprise have charged.

The conspiracy theory began to catch on in April 1987. On the front page of the Miami Herald, Alfonso Chardy reported on a secret meeting in early October 1980 with Richard Allen and Laurence Silberman, then foreign policy advisers to Reagan, and Robert McFarlane, then an aide to Senator John Tower on the Senate Armed Services Committee. The article said they "met secretly" at the L'Enfant Plaza Hotel in Washington, D.C., with a "man who said he represented the Iranian government and offered to release to candidate Reagan 52 American hostages being held in Tehran." Allen told the House Foreign Affairs Committee last May that he went at the "insistence" of McFarlane, who only indicated that the meeting was about the Middle East. Although the article quoted Allen as saying that he rejected the man's offer as "absurd" and told him to deal directly with the Carter administration, the article strongly implied that this meeting was part of a new scandal linked to the Iran-contra affair. Allen's decision not to inform Carter officials of the meeting fueled suspicion about the story.

Abolhassan Bani-Sadr, the president of Iran from January 1980 through June 1981, was quoted as claiming that he "learned in 1981" that Iranian leaders Ali Akbar Hashemi Rafsanjani and Mohammed Beheshti had collaborated with Reagan campaign aides to release the hostages. (Beheshti and Rafsanjani, bitter political opponents of Bani-Sadr, had forced him from power. Beheshti was later killed by a bomb in 1981, and Rafsanjani is now president of Iran.) Bani-Sadr also charged that the Reagan officials had promised Iran that it would receive weapons for its war with Iraq. But Bani-Sadr stipulated that the promises of weapons were not linked to the release of the hostages—and furthermore, he didn't know if any weapons were eventually shipped.

In early July 1987 the October Surprise got a big push from the Nation with Christopher Hitchens's charge that the Reagan campaign assured the Iranians that "if they kept the American hostages until after the election," the Iranians would be rewarded with arms. Hitchens quoted Barbara Honegger, a Reagan campaign researcher and low-level worker in the Reagan White House, as saying that in late October 1980 she had overheard an unidentified "staffer" say, "We don't have to worry about an 'October Surprise.' Dick cut a deal," presumably a reference to Richard Allen.

As these charges began circulating, Bani-Sadr's memory improved dramatically. On August 3 Flora Lewis reported in a New York Times column, based on an interview, that Bani-Sadr now held without doubt that the "Reagan campaign offered arms if the hostages were not released until after the 1980 election." He also asserted that in October 1980 his "aides found out" that Rafsanjani and Beheshti had delayed the release of the hostages, that there was a meeting between Beheshti and a "Reagan campaign official" in Paris, and that he "learned later" that Allen, Silberman, and McFarlane met with an Iranian envoy in Washington.

Bani-Sadr's memory continued to improve. On August 9, 1987, Miami Herald reporter Chardy quoted him as now saying that "secret contacts between Reagan and Khomeini representatives" had fixed a deal in October 1980 to free the hostages. (Note that according to Sick in a 1988 Los Angeles Times story, "Bani-Sadr had nothing to do with the negotiations. He was completely out of it.") The article also reported that the Reagan administration approved of, or at least condoned, Israeli arms sales to Iran in 1981. All the ingredients for the cabal were now in place.

Then, in an August 1987 interview with Leslie Cockburn for her book Out of Control, Bani-Sadr said that he knew ahead of time that Rafsanjani and Beheshti sent an Iranian envoy to meet with Allen and Silberman and that he even protested to Rafsanjani and Khomeini that it was "dangerous" to renege on the negotiations with Carter. Remember that initially he claimed to have no prior knowledge of any such meeting. Later he said he "learned" about the meeting in 1981. Now he was saying that he knew of the meeting ahead of time.

It got better. The following year, in a September 1988 article in Playboy by Abbie Hoffman and Jonathan Silvers, which painted the most comprehensive October Surprise conspiracy to date, Bani-Sadr said definitively that George Bush was the Reagan campaign official who met in Paris with Beheshti in October 1980. (A year later Bani-Sadr said he had a "document" showing that Bush was present at the meeting—but he could not disclose the document because "the life of the writer . . . and the lives of many people would fall into danger.") Bani-Sadr's accusations about Bush prompted an editorial in The Washington Post—not especially disposed to defending Bush in general—in October 1988 that noted Bani-Sadr's motivation in "smearing Bush." The Post wrote, "Bani-Sadr has to hope that U.S.-Iranian relations will continue to be antagonistic if the Iranian opposition is ever to have a chance of gaining important American support. His effort to smear Bush betrays concern about tensions lessening if the Republicans stay in power."

Emboldened by the eager response to his allegation by international journalists, Bani-Sadr wrote his memoirs, which went beyond even the October Surprise conspiracy. In My Turn To Speak: Iran, the Revolution & Secret Deals with the U.S. (published in France in 1989, and in the United States in 1991), Bani-Sadr portrayed himself as a man victimized by the double dealings of the Khomeni regime and the Reagan campaign.

At the same time a new "source" emerged—who was fortuitously able to confirm Bani-Sadr's allegations. His name was Richard Brenneke, an Oregon businessman, and he surpassed even Bani-Sadr in his ability to recall events that he had admitted earlier he knew nothing about.

Brenneke claimed to have worked for the CIA and FBI in addition to the Mossad and the French, Italian, and other intelligence services. His first surfaced in late November 1986, immediately after the official disclosure of the 'Iran-contra affair, when he claimed that he personally had informed then Vice President Bush's office in February 1986 of secret details of the Iran-contra affair. Reporters flocked to Brenneke as he began propounding incredible tales of U.S. and other covert operations. For example, he was a primary source for a front-page New York Times story on February 2, 1987, about the "Demavand project," a purportedly classified CIA-Pentagon operation to ship billions of dollars of sophisticated weapons, including tanks, bombers, and helicopters to Iran. Brenneke, the article reported, had provided the Times with "documents and telexes" including a letter of reference, dated June 20, 1979, which stated that he had been employed for the CIA for thirteen years and that the CIA "found him to be thorough, competent, and very trustworthy."

The CIA and the Defense Department issued categorical denials of the story. Other reporters at the Times began looking into Brenneke's allegations and his background. Both began to collapse. According to a veteran New York Times reporter, "We soon

found out that Brenneke was . . . an absolute liar. Even the documents he gave us were forged, including the CIA letter of reference."

At The Portland Oregonian, reporters were amused at Brenneke's celebrity status: the paper had reported weeks earlier that Brenneke had greatly "exaggerated" his role in arms sales, that he had said he couldn't remember if he worked at the CIA, that none of his international arms dealing ever came to fruition, and that he had been the subject of an FBI investigation for his suspected role in a check-kiting scheme and a forged airplane title report years earlier.

For the most part, however, the press was willing to suspend disbelief. ABC News quickly ran a series of "investigative" stories based on new Brenneke allegations. In April 1988 the network aired a report based on a "confidential source"—who the network later admitted to be Brenneke—alleging that in 1983 the United States, working with Israeli intelligence, secretly flew weapons to the contras and used the planes on their way back to transport drugs into the United States.

Newsweek followed up with a story by Robert Parry that provided even more details about Brenneke's allegations, including the charge that Donald Gregg, Vice President Bush's national security adviser (now ambassador to South Korea), was part of the drugs-for-weapons operation. Parry suggested that he had independent confirmation of the ABC allegations, but Brenneke was the only named source for both news organizations. Over the next five months Brenneke's claims were the focus of more than 200 national news stories and columns. (One of the few reporters to raise questions about Brenneke was Mark Hosenball, who wrote an article for TNR in June 1988 saying that Parry and ABC had uncritically bought the story of an unreliable witness.)

It seemed there wasn't anything Brenneke did not know. He told The Los Angeles Times that he supplied explosives to a PLO training camp located in western Oregon, a camp about which Oregon law enforcement knew nothing. He told the Seattle Times of his knowledge of Israelis training Colombian drug cartel hit squads. He told the Detroit Free Press that he supplied U.S. intelligence with information from an Iranian military officer that included maps of Qaddafi's headquarters two months before the United States bombed Libya in April 1986. He quickly discovered that it was possible to get away with any allegation in the national security arena: if an intelligence agency, already suspect in the public's mind, denied something, that merely reinforced the authenticity of the charges.

By late September 1988 Brenneke, having never mentioned anything about the October Surprise, suddenly emerged as the primary source of the conspiracy in the United States. His disclosures came right after he met Honegger, the former Reagan campaign aide, in August 1988. Honegger had become one of the leading champions of the October Surprise. She claimed to have her own intelligence and confidential sources who "confirmed" the conspiracy and began working on a book called October Surprise, published in 1989.

Honegger herself was no stranger to controversy. A believer in paranormal events (she has an unusual master's degree in "parapsychology"), she claimed a "source" with her voice contacted her in early 1980 to tell her she would get a job with the Reagan administration. She said that an intelligence officer told her that U.S. satellites parted the clouds during Reagan's inauguration to let the sun shine only on Reagan. When she resigned from the Reagan White House, she told a reporter that she had been guided by insights that she described as "channeled information . . . as if it were from the future."

Honegger says in her book that she met Brenneke on August 22, 1988, in Washington. At the meeting, Brenneke told her that he had learned from his "Iranian contacts" that a secret meeting was held at the Raphael Hotel in Paris on October 19, 1980, between William Casey, Donald Gregg, Iranian arms dealer Cyrus Hashemi, and Iranian merchant Manucher Ghorbanifar. Brenneke told Honegger that he was not present at the Paris meeting, but that he had been in the city that weekend and that his presence there was purely "coincidental."

Honegger, who had been in touch with Bani-Sadr and was eager to substantiate his story about Bush attending the secret Paris meeting, recounted the allegations. What could Brenneke tell her about "Bush's possible participation"? she asked. Brenneke said he would "make a few phone calls to see the 'lay of the land,'" and would get back to her.

A week later the Playboy article hit the stands.

On September 23, 1988, Brenneke suddenly recalled that he had attended at least one of the meetings in Paris in October 1980, that there were a total of three meetings held on October 19 and 20, 1980, and that he had played a pivotal role in the October Surprise deal. Brenneke was appearing that day as a character witness at a Denver court for the sentencing of his friend Heinrich Rupp. Trained as a Nazi pilot, Rupp was a Colorado gold dealer who had been convicted of bank fraud and sentenced to forty-one years in jail. Brenneke told the court that Rupp had been prosecuted to shut him up about his involvement in flying Reagan campaign aide to Paris in October 1980.

Brenneke testified that on October 18, 1980, Rupp participated, at the request of the CIA, in a flight taking Bush, Casey, Allen, and Gregg to a meeting in Paris with Iranian representatives to work out a deal to delay the release of American hostages until after the election. He said that Rupp had been a long-time CIA pilot, and that Rupp personally flew Casey to France. Brenneke also said that he attended the third meeting, at which Casey and Cyrus Hashemi (both men were dead by the time of Brenneke's testimony) and Gregg also participated.

Brenneke went on to say that a CIA officer named Robert Kerritt had given him instructions to go to Paris. And as a result of the meetings with Casey and Bush, he claimed that he witnessed an agreement over the "logistics of transferring $40 million [in U.S. funds] for the purchase of weapons [for Iran]." Asked whether he ever played a "role in conveying or transferring that money," Brenneke said, "I don't believe so."

After the February 1987 New York times article had appeared, Brenneke had been contracted by Jack Blum, special investigator for the Senate Subcommittee on Terrorism, Narcotics and International Operations, headed by Senator John Kerry. He met with Brenneke for hundreds of hours, and a year and a half later Brenneke began telling newspapers that Blum and the other staffers corroborated his allegations about the October Surprise. Moreover, Brenneke testified under oath in the Rupp hearing that he had provided the October Surprise information to the Senate subcommittee and that it was later confirmed by the staffers.

Yet according to Blum and other Senate staffers, not only did Brenneke never mention the October Surprise; the subcommittee found him to be an outright liar. The committee obtained thousands of pages of documents from law enforcement and intelligence agencies and discovered, says Blum, "that nothing he said was ture—he had made it up based on what he read in the newspaper or what he was told."

The Senate subcommittee released a 1,166-page report December 1988, in which two pages are devoted to Brenneke. Among the conclusions: "The records show that Brenneke was never officially connected to U.S. intelligence." The report noted that Brenneke "began telling his stories about his 'secret' life as a spy" after being stopped by the U.S. Customs Service on his way back from Europe and asked about documents relating to arms deals. "His response was to offer to become a Customs informant," stated the report. Customs declined the offer. The report also noted that "Brenneke applied for a job with the CIA when he finished school but his application was rejected."

By May 1989 Brenneke's stories began to catch up with him. A Denver grand jury indicted him for perjury for making false declarations under oath to a federal judge in the Rupp hearing. Brenneke's trial took place in Portland, Oregon, in April 1990. A CIA official testified that not only had Brenneke and Rupp never worked for the CIA; the agency had never heard of anyone named Robert Kerritt—Brenneke's supposed contact. Secret Service agents testified that Bush had not left the country in the two weeks before the election; two of Casey's secretaries said the same thing about their boss. Then Gregg testified that on the weekend of October 18 and 19, 1980, rather than being at the Paris meetings as Brenneke claimed, he was on vacation at a beach in Delaware; on Monday October 20, he said he was back at work at the Old Executive Office building. He recalled that the weather was cloudy and produced a photograph of himself and his daughter on the beach. The back of the photo is stamped "October 1980" from the processing lab. The photo showed a hazy but partly sunny sky.

In response, Brenneke's lawyers produced Robert Lynott, a retired Portland TV weatherman who testified that his review of the weather reports showed there were overcast and rainy conditions most of that weekend in Delaware—and that therefore the photo must have been taken at a different time. This turned out to be the key piece of evidence on which the jury concentrated.

Following a three-week trial, Brenneke was acquitted, thanks to the prosecution's incompetence and overconfidence and the defense's success in shrouding Brenneke in the smoke and mirrors of the intelligence world. The prosecution was roundly criticized for not asking for or admitting any documentary evidence. The Secret Service agents didn't bring records to the trial, which made them vulnerable on cross examination. Casey's two secretaries admitted that Casey kept secrets from them, which rendered their testimony questionable in the minds of jurors.

Prosecutors did not introduce into evidence Gregg's datebook, which has the word "beach" penned on the October 18 weekend, or the four computerized White House memoranda that he sent from and received in his office on October 20. Thus the jury became preoccupied with the questions raised by the defense about the alleged date of the photograph. Three jurors later admitted that their

"doubt" about the photograph was the main reason they had acquitted Brenneke.

Despite the litany of Brenneke's inconsistencies, October Surprise supporters touted his acquittal as proof of his veracity. Sick says: "Brenneke had the courage of his conviction in taking on the U.S. government on three key allegations [about the presence of Bush, Casey, and Gregg at the Paris meetings], and he was acquitted. . . . The evidence on George Bush not being in Paris is less persuasive than that of Donald Gregg. The way Bush has dealt with this is very suspicious. There is not a single shred of evidence that Bush was where he said he was." "Frontline" embraced Brenneke's trial defense that the weather conditions on the Delaware shore on October 20, 1980, were incompatible with the Gregg photo, claiming that "U.S. government documents show the weather was cold and cloudy that weekend on the Delaware shore." In fact, detailed hourly weather maps of that weekend from the National Oceanic and Atmospheric Administration show that on Sunday afternoon weather conditions were compatible with the picture Gregg produced.

"Frontline," Sick, and October Surprise conspiracy supporters also rely on the "eyewitness testimony" of Brenneke's good friend Rupp. Weeks after Sick published his op-ed piece, in which he indirectly cited Brenneke and Rupp (though not by name), when questioned by reporters skeptical about Brenneke's credibility, he disclaimed any reliance on him. Rupp, however, was still a primary source. He has maintained that his involvement in a loan fraud, which led to the collapse of the Aurora Bank in Colorado in 1985, was actually due to the CIA, for whom he said he was working, as part of a "national security operation" related to Iran-contra.

Like Bani-Sadr and Brenneke, Rupp's sudden recall of the October Surprise came about belatedly. Only after his conviction for bank fraud, Rupp began telling newspapers and TV stations that he flew Casey to Paris on October 18, 1980, and insisted that Bush was present on the tarmac at the French airport. There are numerous inconsistencies in Rupp's account. He was unable to produce any proof that he worked for the CIA, and the plane he said he piloted to Paris that weekend, according to leasing company records, was actually parked in California. Furthermore, Rupp's passport (and Brenneke's too, for that matter) shows no exit from the United States or entry into France in October 1980. Rupp told reporters he didn't know who his passengers were at the time of the flight to Paris. He claims only to have recognized the "Old Professor" six years later when Casey was shown "testifying on television" about the Iran-contra scandal (a dubious detail, seeing that Casey had a stroke a day before the televised hearings). Rupp also said it was only years later that he recognized the "tall man with the crooked eyes"—the person at the Paris airport—as George Bush. Is it conceivable that Rupp would not have recognized Bush or Casey when he saw them? After all, he claims to be a long-time CIA employee and pilot—and Bush was head of the CIA four years before. Moreover, Brenneke says that Rupp was one of "Casey's favorite pilots."

As for the allegations about Bush's presence in Paris on October 19 and 20, Secret Service records and contemporaneous news accounts of Bush's speeches show indisputably that he is publicly accounted for almost hourly—in numerous campaign stops—from October 15 through the late evening of October 18. On Sunday morning, October 19, according to information obtained by Gordon Crovitz of the Wall Street Journal, Bush had a private lunch with Judge Potter Stewart at the Chevy Chase Country Club. And Secret Service records show that agents went to the club to provide protection for Bush that Sunday morning. On the evening of October 19 Bush spoke to at a campaign event at the Washington Hilton, which is substantiated by newspaper accounts. On Monday, October 20, according to a schedule released by the White House and confirmed by newspaper and wire service reports, Bush campaigned the entire day in several cities in Connecticut.

When confronted with this information, October Surprise buffs either claim that the Secret Service records were fabricated or maintain that Bush could have flown to Paris on the Concorde and technically returned eight hours later. But if he did fly via Concorde (or any other high-speed plane), it conflicts with all of the statements made by Rupp and Brenneke, who said that Bush and Casey had flown to Paris on October 18 on a BAC-111. Nor is it compatible with any of the statements made by the other key sources used by "Frontline" and Sick.

By any measure of honest reporting, the October Surprise conspiracy should have died long ago. But like a version of the child's game "telephone," the story had taken on a life of its own, changing and expanding as it went from source to source. More and more "eyewitnesses" began emerging who often appropriated elements of the conspiracy, swapped lies among themselves or were prodded by journalists, and then wove new tales inserting themselves as minor or major characters. Though Bani-Sadr has consistently claimed to have his own proof of the conspiracy, for his book his only evidence was excerpts from Brenneke's court statements in the Rupp hearing. An October Surprise cult emerged, fueled by entrepreneurial journalists who had made the allegations into a lucrative cottage industry. PBS's "Frontline" documentary, for example, cost about $200,000 to $250,000 to produce, paid partially by taxpayer funds.

"Frontline" touted Brenneke's acquittal on perjury charges, declaring that "the government tried and failed to prove that William Casey was not in Paris." "Frontline" and Sick did not tell the public about Brenneke's numerous misstatements, discrepancies, and prevarications, which cast doubt on the credibility of the entire October Surprise scenario. On "Frontline" Brenneke said again that Gregg and Casey traveled secretly to Paris in October 1980. (Allen has produced a videotape of his October 19 appearance on "Meet the Press," so his name did not come up this time.) But Brenneke changed his story once again. In September 1988 he testified that he did not play a role in the transfer of $40 million in weapons to Iran: on "Frontline" he said that he was instructed by Casey at the meeting to launder the $40 million through a Mexican bank and that he did so.

Rather than rely exclusively on Brenneke, Sick and "Frontline" featured new sources who they said "confirmed" each other's accounts. These included Hoshang Lavi, Ari Ben-Menashe, and Jamshid Hashemi. Lavi, an Iranian-born arms dealer, claimed he was the unidentified Iranian emissary who met with Allen, McFarlane, and Silberman in Washington in early October 1980 at the L'Enfant Plaza Hotel. "Frontline" quoted Lavi as saying that he witnessed Khomeini's representatives being allowed to enter NATO bases in Europe and "pick whatever they want" for shipment back to Iran.

What "Frontline" and Sick did not reveal was the following: (1) Lavi's claim to have met the three Reagan supporters has been denied by McFarlane, Allen, and Silberman. (2) The only independent record of Lavi's meeting with anyone in 1980 are memoranda from the John Anderson campaign showing that he approached Anderson campaign officials on October 2 offering to secure the release of the hostages if the United States would unfreeze Iranian assets and provide F-14 spare parts. The campaign referred him to the State Department. (3) Lavi implied that he was acting on behalf of Bani-Sadr, but the State Department, according to 1980 department documents, found that he "had no authority to speak on behalf of Bani-Sadr," that he was a "self-appointed middleman" who was trying to broker a deal by going back to each party showing he had lined them up, and that "Lavi was a thoroughly disreputable character." (4) American and European defense and intelligence officials say it is ludicrous to believe that Iranians were escorted to NATO bases to play a military version of "supermarket sweep." (5) Since 1988, when Lavi was "discovered" by Honegger, he has made a series of unsubstantiated allegations, including that Customs Service agents assassinated an informant (Cyrus Hashemi) by pumping poison gas into his hospital room.

Even more than Lavi, "Frontline" and Sick relied heavily on the statements of Ari Ben-Menashe, an October Surprise source who only surfaced in 1990. "Frontline" described Ben-Menashe as a "former Israeli intelligence officer" and aired his claim to be "one of half a dozen Israelis sent to Paris at Casey's request to help coordinate arms deliveries" to Iran. "Frontline" reported that Ben-Menashe "saw a man [he] believed to be Bush" in Paris. Sick used Ben-Menashe as one of his major sources in proving that the October Surprise happened, that Casey was a key participant, and that Israel shipped weapons as part of the "deal."

Apparently emboldened by the acceptance of his allegations on "Frontline" and by Sick, last spring Ben-Menashe told several Australian newspapers and In These Times that he saw Bush arrive at a meeting on October 17 or 18, 1980, at a "top-floor conference room" in Paris, shake hands with Mehdi Karrubi, a leading Iranian cleric, and "close the door." But none of the other "eyewitnesses" and "sources" had ever mentioned Ben-Menashe's presence in Paris or that of any other Israelis, or of Mehdi Karrubi. Moreover, all of the reported sightings of Bush took place on October 19 or 20—not on October 17 or 18. Ben-Menashe has also claimed that Israel shipped more than $82 billion in arms to Iran since 1980—more than thirty-five times Israel's defense imports and domestic weapons production!

In an interview with In These Times last April, Ben-Menashe claimed that it was he—not Lavi—who met to discuss the hostages in early October at the L'Enfant Plaza Hotel with Allen, McFarlane, and Silberman.

Without providing any evidence—despite repeated promises to reporters and to congressional officials to hand over "documents"—Ben-Menashe has belatedly become a key insider on other topical issues. He has claimed to have detailed inside knowledge of the Inslaw case. He said that he met many times with Robert Gates in Chile and the United States, and even that he transferred a suitcase containing $16 million to Gates at one point. (The CIA and the National Secu-

rity Council provided documents to the Senate Intelligence Committee showing that Gates was meeting elsewhere at the time of every meeting cited by Ben-Menashe.) Ben-Menashe has said that McFarlane was a paid Israeli agent since 1978, had received "millions of dollars" from Israel, and was the secret "Mr. X" in the Jonathan Pollard spy case. He even says that the United States, through Israel, shipped "billions of dollars of arms" to Iraq. He has become an "expert" on Israel's nuclear program—despite the fact that he never had any connection to it. He has claimed that in 1981 he planted the homing device at the Osirak reactor before it was bombed by Israeli planes, but records show he wasn't out of the country then. He has told Israelis and journalists that he was even offered to be head of the Mossad, Israel's secret intelligence service, but that he declined.

Sympathetic reporters uncritically portray Ben-Menashe as a "senior Israeli intelligence officer" and a "national security adviser" and "special emissary" to Israeli Prime Minister Yitzhak Shamir. In a recent interview, Sick said: "I am satisfied that Ben-Menashe knows a great deal. He has told me three or four things that I was able to corroborate. He told me he was an officer in a sigint [signal intelligence] unit. I have made no attempt to corroborate any of his other information [beyond allegations of 1980]." Seymour Hersh's new book, The Samson Option, which describes Israel's nuclear program and intelligence activities, uses Ben-Menashe as the primary source. Hersh said in an interview that Ben-Menashe was in sigint, that he was a "key player," and that "the Israelis want to hurt him bad" for his leaks of high-level classified information. But Hersh didn't interview Ben-Menashe until April, and he told The New York Times that he did not go to Israel to investigate Ben-Menashe's allegations or credibility. Hersh claims, incorrectly, that he would have been subject to Israeli censorship. What's more, according to U.S. and Israeli government documents and officials, Ben-Menashe was never in sigint, and the Israelis have never even attempted to initiate legal proceedings against Ben-Menashe, an act they would have obviously pursued if he were the source of important leaks. The closest access Ben-Menashe ever had to intelligence was his work as a low-level translator for the Israel Defense Forces External Relations Department from 1977 through 1987. Contrary to Hersh's assertion that the department is one of the most sensitive branches of military intelligence, it is in fact, compared with other branches, one of the most insignificant.

Ben-Menashe's responsibilities included translating letters and reports between the Israeli military and foreign military attachés. They did not include any translations of cables, though Israeli officials acknowledge that he did have access to minimally classified information, including a report in 1986 prepared for the United States discussing Israel's request to replenish weapons that it supplied to Iran as part of the Iran-contra operation. This alerted him to Israeli involvement in the affair, and to Iran's desperate search for weapons.

Like others before him, Ben Menashe's recall of the October Surprise came about belatedly—after he was arrested in 1989, imprisoned for a year, tried, and ultimately acquitted in 1990 on charges of illegally trying to export planes to Iran. According to his own letter of resignation, he left in 1987 because he had not received a promotion in many years. (Ben-Menashe has told reporters that he was fired for leaking a covert operation.) His personnel file notes that he was denied a special security clearance at one point because he was considered "delusional." It also says that he had begun trying to peddle weapons in scams in Chile (where he impersonated an Israeli embassy official), Singapore, and Sri Lanka (where he impersonated a Hebrew University professor). Since 1987 he has periodically charged foreigners with being Mossad agents, without any evidence. The most recent and notorious of these claims, which appears in Hersh's new book, it against media giant Robert Maxwell, who has sued.

In 1989 Ben-Menashe was arrested in California along with two Americans. A U.S. Customs agent, posing as a buyer for Iran, tape-recorded some of the conversations in which the men offered to ship the military transport planes to Iran, using a false end-user certificate, for $12 million apiece. Ben-Menashe was going to obtain the transport planes from Israel. The trial of Ben-Menashe and one of the Americans was held in 1990 in New York (the other was tried in California); Ben-Menashe was eventually acquitted. Most of the evidence that the prosecution introduced was directed against his co-defendant, and the evidence submitted against Ben-Menashe was insufficient to convict him.

Yet the court records and information provided by prosecutors show how wildly inconsistent Ben-Menashe's story has been. In 1988 he told a Time reporter that he was involved in a "secret operation" to free American hostages in Lebanon by arranging the sale of planes to Iran through Israel. But a short while later Ben-Menashe told a U.S. Customs undercover agent that since 1987 he had been "self-employed as a journalist and a translator and a political writer doing a lot of traveling * * * [and] that he had no ties with the Ministry of Defense." the undercover agent also testified that Ben-Menashe revealed to him that he was trying to obtain planes from Israel to be sold to an arms buyer. At pretrial, however, Ben-Menashe told attorneys that he became involved in plane sales to Iran because he wanted to expose Israel's covert operations. Ben-Menashe said he was acting as an "undercover journalist gathering information for a book" to "expose the ugly role of Israel and the United States in weapons sales."

During and after the trial, Ben-Menashe contends that he was one of the leading intelligence agents in Israel: Ben-Menashe's lawyer told the court that only three people in Israel were "privy to what was going on with Iran-contra"—Shamir, Israeli counterterrorism official Amiram Nir, and Ben-Menashe. Ben-Menashe claimed that Shamir dispatched him personally to carry out an operation to investigate who was trying to sell planes to Iran. According to sworn affidavits, Israeli officials in the office of the prime minister, including Shamir himself, never heard of Ben-Menashe.

Despite his brazen claims of being a "senior intelligence officer," Ben-Menashe went to extraordinary lengths to prevent the prosecution from obtaining his personnel records. He refused to sign a waiver authorizing the Israeli government to release his records to the U.S. court, telling his lawyers and the prosecutor that to do so would constitute a violation of the "Official Secrets Act in Israel," punishable "by death." In fact, there is no such thing as an "Official Secrets Act" in Israel, and there is no death penalty for releasing classified information—nor for that matter has Israel ever invoked its death penalty, with the notable exception of the execution of Adolf Eichmann. The judge compelled Ben-Menashe to sign the waiver. The records were then produced, which showed he was just a translator.

As a final defense, Ben-Menashe supporters claim that he must be credible because he knew of the Israel arms sales to Iran before they became public. But Israeli officials note that this knowledge can be explained both by his work translating letters to the United States in 1986 and by the fact that rumors of Israeli arms sales to Iran had circulated routinely throughout the Israeli Ministry of Defense. Ben-Menashe supporters also cite the numerous trips abroad he made from 1980 through 1987, evidence, they claim, that he was a secret agent. Yet his trips were on non-paid leave, and were recorded in his civilian passport. He never possessed a diplomatic passport as he claimed.

The last "new" primary source used by "Front-line" and Sick was Jamshid Hashemi, an Iranian middleman. His account added a new dimension to the October Surprise: he claimed that, in addition to the meetings in Paris in October 1980, there were earlier meetings in July and August of 1980, which Casey attended and at which the "deal" was actually made to delay release of the hostages.

In interviews on "Frontline" and with Sick, Jamshid said that in July 1980 he and his brother Cyrus (who died in 1986) met secretly in Madrid with Casey, a "senior CIA officer," and Iranian cleric Mehdi Karrubi. Jamshid said that Casey urged that "the Iranians hold the hostages until after the election," and that he, Cyrus, and Karrubi attended a second meeting with Casey in August in Madrid, where "Karrubi expressed acceptance ... the hostages would be released after Carter's defeat." In his op-ed piece, Sick accepted uncritically Jamshid's claims that he and his brother helped put the final touches on an agreement between Casey and Iran that weapons would be supplied if Iran delayed the release of the hostages.

Missing from Sick's and "Frontline's" recounting are revelations of Cyrus's and Jamshid's backgrounds that show their credibility problems to be even worse than those of Brenneke and Ben-Menashe.

Cyrus Hashemi was a typical Iranian middleman, trying to marry up business deals between Iran and other countries by inflating his importance to each side. According to declassified CIA documents and American intelligence officials, in early 1980 he offered his services to the Carter administration in getting the hostages released in return for spare parts for Iran. His lawyer, former Attorney General Elliot Richardson, put him in touch with the State Department. During the abortive attempt to free the hostages in April 1980, Cyrus offered to organize assistance from supporters in Tehran. The State Department even supplied him with funds, through the CIA, to assist him. But Cyrus failed to demonstrate that he had any connections in Tehran, and the CIA concluded that "his offers were part of a scam." All contact was dropped with Cyrus.

Cyrus was only one of several self-anointed Iranian intermediaries who purported to speak for Iran in dangling the freedom of the hostages in exchange for military weapons. Sick himself observed as much several years ago, in a chapter for the 1985 Council of Foreign Relations Anthology American Hostages in Iran: The Conduct of a Crisis: "Throughout the late summer and fall of 1980, the Carter administration had been approached by private individuals claiming to speak for Iranian authorities ... the evidence

strongly suggested that these were private entrepreneurs who saw the possibility of some lucrative business for themselves."

In mid-1984 Cyrus, Jamshid, and a third brother, Reza, were indicted for their illegal efforts from October 21, 1980, through November 1981 to ship tens of millions of dollars of military equipment to Iran. After learning about the Hashemis' secret contacts with Iranian arms procurement officials in September 1980, FBI agents wiretapped Cyrus's office and temporary apartment in Manhattan. According to a transcript of one conversation on October 21, 1980, Cyrus and several Americans discussed plans to fulfill a request from Iranian officials for Cyrus (who had told them that he could obtain badly needed weapons) to arrange the exporting of arms. In the conversations Cyrus admitted that the project was illegal and suggested various ways of avoiding detection. That was the day after Brenneke had said Cyrus was in Paris meeting with Casey. In a subsequent interview with ABC's "Nightline," Jamshid made another startling claim; that starting up in August 1980, after the deal" was concluded with Casey, tens of millions of dollars of American-made weapons were shipped by boat to Iran from Israel. No evidence exists to support the claim, but if it is true, why would the Hashemis have worked so feverishly to obtain weapons in October through what they knew were illegal means?

Reza pleaded guilty, but Cyrus and Jamshid fled to Europe to avoid arrest. Cyrus retained several lawyers, including Richardson, who asked Casey, unsuccessfully, for special dispensation for his client in light of his earlier "assistance" to the United States in 1980, referring to his secret work with the State Department. When that failed, Cyrus attempted, again unsuccessfully, to negotiate for charges against him to be dropped in return for his cooperation in interceding with Iranian officials to secure the release of the hostages in Lebanon. Throughout this period neither Cyrus nor Reza nor Jamshid ever revealed to their attorneys or to U.S. government officials their alleged secret meetings with Casey in 1980. Is it conceivable that these men, who were desperate to get the charges against them dropped and were threatening, according to memorandums of conversations between Justice and CIA officials at the time, to reveal anything they knew, would not have threatened to disclose the most damaging information they possessed—a secret deal between Casey and Iran in 1980?

According to court records, in 1985 Cyrus, still a fugitive from justice, became involved with a group of international arms dealers, including Americans and Israelis, trying to sell arms to Iran. Cyrus then asked his attorney to relay to the Justice Department his offer to serve as an informant in the arms transaction in return for dropping the charges. The U.S. government agreed only to be "lenient" with Cyrus. He accepted. Soon thereafter the Customs agents, as part of a giant sting operation, began working with Cyrus overseas and in the United States to record secretly his conversations with the arms dealers.

Cyrus died on July 21, 1986, in London. A coroner's report attributed his death to a virulent strain of leukemia, which had been diagnosed only days before. A U.S. Customs Service agent attended the autopsy and concurred in its conclusions. Nevertheless, Hashemi's supporters, including attorney William Kunstler (who represents one of the arms dealers) and "Frontline's" Parry have stated that his death was "mysterious," that Cyrus was murdered to shut him up about what he knew about the October Surprise, and that the U.S. government has covered up his murder. Kunstler, who says that "there are suspicious needle pricks on both elbows" about the case, points out the The Village Voice is seriously considering paying for an exhumation. If anyone had an incentive to kill Cyrus, however, it was the arms dealers. After all, it was Cyrus's death that forced the government to drop its case against these men.

On July 20, after Sick and "Frontline" had aired Jamshid's charges, ABC's "Nightline" picked up on them. In an off-camera interview Jamshid described the meetings in Madrid at which the deal was allegedly arranged. At the first of them, which he said covered two consecutive days in "late July," Casey and two unidentified Americans first proposed the deal to Mehdi Karrubi, a "close associate" of Khomeini. The Hashemis allegedly served as interpreters. According to Jamshid, the parties met in Madrid again two weeks later, when Karrubi conveyed khomeini's approved of Casey's offer. "Nightline" and The Financial Times of London investigated Jamshid's charges and claimed to have found evidence that corroborated the story.

Among the "evidence" was the fact that hotel records indicate a Jamshid Halaj and an A. Hashemi checked into the Madrid Plaza in late July, and an Ali Balnean in August. These names allegedly confirmed Jamshid's recollection that he and his brother often used aliases. Jamshid even furnished "Nightline" with a business card using the name Ali Balnean. ("Nightline" also said that the name Robert Gray was in the hotel records. Robert Gray is a Washington public relations executive who served as Casey's top deputy in the 1980 campaign. He supplied "Nightline" with his passport, which indicated that he had not left the country in July or August 1980.) Even if one were to believe that the records were not altered with the Hashemis running around the globe attempting to broker arms deals it would hardly be surprising that they had been in Madrid during the tie Jamshid is talking about. Casey, however, was not.

"Nightline" said that Hashemi's accounts of the meetings were supported by the fact that William Casey was unaccounted for in the public record between August 8 and August 13, as well as July 27 to July 29. It is true that Casey was absent from the public record for a week in August, but it is surely more likely that he was busy with the Reagan campaign than flying off to Madrid. "Nightline" offered more "evidence" in support of the July absence: an unrelated article from The New York Times on July 30, 1980, about the complaints of a right-to-life group over Bush's selection as vice president, quoting a Reagan spokesman as saying Casey would deal with the group, "when he returns [today] from his trip abroad . (In a side note, "Nightline" did report that Jamshid Hashemi said Bush did not attend the alleged October Paris meetings as claimed by a number of others.)

However, "Nightline" had failed to find out that Casey was not in Madrid, but in London, at the Anglo-American Conference on the Second World War. So at the end of an unrelated show a week later, having been contacted by some of those who had attended the conference with Casey, "Nightline" provided a brief update on their previous report. They said that it has been confirmed that Casey had presented a paper on special operations in France during World War II on the morning of July 29, and showed a picture of Casey with some others taken at a reception on the evening of July 28. Ted Koppel said this would leave July 27 and early on July 28 for Casey to have met in Madrid (it is a ninety-minute flight from Madrid to London).

But "Nightline" was wrong again. Jonathan Chadwick, the secretary of the British planning committee for the conference, showed us documents from the conference, which chart the attendance of each participant at each session as well as their accommodations. Casey is not only accounted for in the evening of July 28 and the morning of July 29, but also for the night of July 27 and all day, except for a brief absence, on July 28. This makes Jamshid's story of two consecutive days of meetings impossible.

Not surprising, after the "Frontline" and Sick airing of the October Surprise, new "sources" emerged to tell of their dealings with Bush and Casey. Gunther "Russ" Russbacker claimed that he was the "smoking gun" in the October Surprise conspiracy. He told Marc Cooper of The Village Voice, in a story published this past August, that as instructed by his "big boss" at the CIA, he—along with "co-pilot" Richard Brenneke—flew Bush and Gregg back and forth to Paris in October 1980. What's more, Russbacker claimed that he flew back to the United States in a SR-71 supersonic high altitude spy plane in a flight that lasted ninety minutes. "Sitting next to me was George Bush," throughout the flight.

Russbacher gave his interview to The Village Voice from prison, where he is serving a twenty-one-month sentence for impersonating a federal officer. Yes, he too claims that he was framed by the CIA to shut him up. But he would not be silenced. And as noted by the Voice, Russbacher "has already become a sought-after guest on the radio talk show circuit (from a phone inside the prison) and his story has elicited queries from ABC 'Nightline,' NBC, CBS, The New York Times, Newsday, USA Today, San Diego Union, San Jose Mercury News, Dallas Morning News, and other publications."

The Voice revealed that Russbacher had a lengthy relationship with federal authorities, going back to 1965 when he was arrested for impersonating a U.S. marshal, to his army desertion in 1967, his false claim that he was an Army major, and his escape from prison in 1975. In 1987 he pleaded guilty to securities fraud.

For believers in the October Surprise, no doubt there are other "sources" out there, waiting to provide their own testimony. Yet the story has finally begun to unravel—and at least one star witness seems to have caught himself in his own web of lies. The Voice, which had been a proponent of the conspiracy, published a piece in September declaring that Brenneke "was nowhere near the alleged conspirators' meetings in Madrid and Paris in 1980, where he claims he helped Republican big-wigs negotiate a secret hostage deal behind Jimmy Carter's back." The author, Frank Snepp, had obtained Brenneke's diaries and credit card receipts, which showed that between 1980 and 1982 Brenneke "was never away from his favorite Portland restaurants and shopping malls for more than a few days at a time"—despite his sworn testimony that he personally flew planeloads of arms to Iran for "four to five weeks at a time" and his claim to have met with Bush, Gregg, and Iranian intermediaries during the same period.

Brenneke had originally given his financial documents to a writer named Peggy Adler Robohm after she signed a contract with

Brenneke and his agent last year to write his story. Initially an ardent believer in Brenneke, after scrutinizing his personal records Robohm found credit card bills and personal calendar notations that showed indisputably that he had lied, and she volunteered her information to Snepp. Snepp, who had reported Brenneke's allegations as truthful for ABC News for several years, now admits that his "apparent October Surprise fabrications undercut the credibility of everything he touched." He also concedes that Brenneke's own letters "trace the evolution of his public allegations, showing how tips from journalists and other sources prompted him to change this or that date, or modify a particular story line."

Still, cospiratorialists are not easily dissuaded. Although Snepp no longer believes that Bush or Gregg went to Paris in October 1980, he believes that Casey met with Iranian officials in Madrid in July 1980 to negotiate a secret deal with the Iranians. As for Brenneke, Snepp questions whether he was deliberately planted to "sidetrack and sabotage the investigation." Nevertheless, it is important to note that despite the irrefutable evidence that Brenneke never participated in any meetings, none of the other key sources has ever disassociated himself from Brenneke.

Meanwhile, with Brenneke largely discredited, Ben-Menashe has emerged as the main source. The October issue of Esquire features an article by Craig Unger that rehashes many of the earlier allegations and Ben-Menashe's most fantastic stories about the conspiracy. Not to be outdone, Newsweek has hired Unger to be a special consultant to help promote its own October Surprise investigation, although it recently published a piece raising serious questions about Ben-Menashe's credibility.

Bani-Sadr himself seems to be tripping over misstatements he has made over the past several years. In an interview with The New Republic in September 1991 at his home in Versailles, he recanted key allegations. Asked whether he still affirmed his charge in Playboy that Bush led the American side in secret Paris meetings with the Iranians and at least three arms dealers whom he also named, Bani-Sadr said, "No, that information had been given to me. So I gave the information so that it could be checked to see if they were there. For me, their presence does not matter. I have never guaranteed that those people were really those who had negotiated."

Pressed on his allegation in his book and in Playboy about Bush's presence in Paris, which he had said came from "intelligence," Bani-Sadr now backed away: "I have always repeated that I wasn't sure." He went on to say: "As a matter of fact, I am a sociologist. I do not deal with names; I deal with relations. And morally also I cannot really say if these people or other people were there because I am not sure. . . . I received names from Iran and I transmitted them; some proved to be true through research and others did not." Still, Bani-Sadr had a novel explanation for why he had raised the Bush charge: "It is said that Bush himself and his entourage initiated this information so they could later refute it and brand it all lies."

In the end, October Surprise believers point to their final fall-back argument: Casey was capable of doing anything. Indeed, Casey was capable of doing a lot of nasty things—as demonstrated by the Iran-contra disclosures. But no evidence has ever emerged that shows Casey at a secret meeting in Madrid or involved in any scheme to delay the release of the hostages.

On October 20, the very day that Brenneke and Ben-Menashe claim that Casey was in Paris, campaign records show that Casey had an 8 a.m. appointment at the Metropolitan Club in Washington and that he had two other appointments that day. Moreover, Richard Allen's personal telephone log shows that Casey made a telephone call to him on October 20 at 7:30 a.m., which Allen recalls as being local.

Proponents of the October Surprise theory, including Sick, cite as circumstantial evidence of a Reagan-Khomeini deal the facts that promising negotiations with the Carter administration in the fall of 1980 were broken off and that the Iranians dropped arms from their list of demands. Even here, however, the events do not support the conclusion. According to all accounts of the crisis, far from breaking off, the negotiations continued intensely through January. In September 1980 Khomeini sent his associate Sadegh Tabatabai to meet with the American negotiator, Warren Christopher, in Germany. "The first meetings were very promising," Christopher told The Los Angeles Times in October 1988. Tabatabai presented a set of moderate demands, including a U.S. non-intervention commitment, the unfreezing of Iranian assets in the United States, and the return of the Shah's wealth to Iran. In addition, Tabatabai asked for the delivery of some $350 million in arms and other military equipment that the Shah had purchased. Although Sick and other conspiratorialists remain surprised at the dropping of this demand, Christopher, who should know, notes: "I discouraged it, and it never came back. . . ." As he explained to The Los Angeles Times, "The issue of arms stayed on the table only briefly, I think they were just testing us."

In September 1980 Iraq invaded Iran. The Iraqi invasion preoccupied the Iranians, interrupting the negotiations. It was not until November 2, after they had stabilized the front, that the Iranians were able to return to the negotiating table. It was too late to reach a deal before the November 4 election. Both Christopher and Lloyd Cutler, counsel to President Carter, accept this explanation. As Christopher said: "It is an interesting question why the promising meetings we had in September ended so abruptly. . . . But I've always felt that the outbreak of the war seemed a sufficient explanation." In an op-ed piece in The New York Times, Cutler wrote that it was not until later in the fall that Hashemi Rafsanjani consolidated power, and any earlier deal would have made him vulnerable to attack from the more radical, anti-U.S. mullahs, including Bani-Sadr, who opposed the January deal with Carter as being too favorable to the United States. It was for this reason also that the Iranians rejected an October 11 offer from President Carter to provide, in exchange for the release of hostages, $150 million in arms that had been purchased by the Shah but held in the United States after the revolution. The release was in fact delayed, but it was done so unilaterally by the Iranians for their own motives—not least their enmity for Carter.

One of Sick's and "Frontline"'s major claims is that Israel served as a conduit for weapons immediately after release of the hostages. Yet none of their sources even remotely agrees on what arms were allegedly traded as a result of a deal, or how they were traded. Ben-Menashe's assertion that Israel sold $82 billion in arms to Iran over six years, mostly transported by plane, is contradicted by Jamshid Hashemi's statement that his brother arranged for the shipment of $150 million in arms by boat in four round trips from Israel to Iran between August 1980 and January 1981. Houshang Lavi declared that he witnessed Iranian officials select arms on NATO bases in 1981, and Richard Brenneke claimed that he laundered $40 million to Iran for arms purchases. And Bani-Sadr can't even get his own story straight. In In These Times he said that Iran received between $50 million and $100 million in arms during his administration. In his book and in our interview, however, Bani-Sadr denied that any large arms shipments were received when he was president, and that those promised as a result of the 1980 "deal" are continuing today.

Israel did in fact deliver arms, most probably with Reagan administration approval, in February 1981. However, State Department documents and interviews with Israeli and U.S. intelligence officials show that the amount was no more than $70 million. Moreover, the shipments were anything but an aberration. They were the resumption of what had been Israeli policy toward Iran prior to the crisis and the arms embargo, a policy that had often diverged from American interests. Israel had even continued some shipments during the embargo, but when Prime Minister Begin retroactively asked President Carter for his approval, Carter angrily refused, and no more equipment was traded. Shipments were resumed only after Carter himself, as part of a final agreement before he left office, lifted most sanctions on Iran on January 19, 1981.

Meanwhile, Sick has plunged even further into the depths of conspiracy. Several journalists say that earlier this year he told them that Gates was part of the October Surprise in 1980, and that the Senate Intelligence Committee chairman, David Boren, would not investigate because he was being "blackmailed" by the White House, which threatened to leak derogatory allegations about his personal life. According to Sick: "I never said I had personal knowledge of that. It was being told to me by other journalists." As for the bigger story, Sick says: "The whole October Surprise was a professionally managed covert action, and I'm frankly surprised that I have as much evidence as I do."

Sick's stubborn perpetuation of the story is all the more surprising given the scorn with which he greeted the Republicans' allegations in 1980 that Carter was planning an "October Surprise" to win the election. Six years ago, writing in the Council of Foreign Relations anthology, he declared: "In the last few months before the presidential elections, there were spurious reports that the Carter administration was planning a spectacular military operation against Iran. This so-called 'October Surprise' allegedly would be intended to win votes for the president. The story was a total fabrication. It was promptly denied by the White House, and a number of responsible newspapers refused to print it. Nevertheless, the story received widespread attention and soon developed a life of its own."

[From Newsweek, Nov. 11, 1991]

MAKING OF A MYTH

It is a story that will not die—a dark tale of conspiracy and political intrigue that, if true, would constitute something like an accusation of treason against George Bush, the late William Casey and other members of Ronald Reagan's 1980 presidential campaign. Briefly put, the "October Surprise" theory holds that Bush or Casey—or possibly Bush and Casey—cut a secret deal with Iran in the

summer or fall of 1980 to delay the release of 52 U.S. hostages until after the November elections. Their objective, or so the theory holds, was to deny Jimmy Carter whatever political advantage the hostages' last-minute release might create—or, in short, to swing the 1980 election toward Reagan and Bush.

The October Surprise theory has been kicking around for the past 11 years, and it has become a mother lode for conspiracy junkies of all political persuasions. It got its biggest boost early this year when Gary Sick, a former member of Jimmy Carter's National Security Council staff, wrote an article on the op-ed page of The New York Times asserting his belief that it could have happened. Sick, who has already written a much-praised book ("All Fall Down") about the Iran hostage crisis, is about to publish a second book laying out his case for the October Surprise. The new book, to be published this week by Random House, is entitled "October Surprise." The Senate Foreign Relations Committee, meanwhile, voted last week to launch an investigation of the October Surprise theory, and the House Rules Committee is scheduled to vote this week whether or not to launch a separate investigation headed by Rep. Lee Hamilton of Indiana. So, true or not, the October Surprise is about to become yet another exhibit in the Beltway's chamber of Alleged Political Horrors—to escalate, along with the BCCI scandal, the Iran-contra affair and the savings and loan crisis, from cocktail-party gossip to subpoenas, sworn testimony and endless disputes among lawyers, investigators and witnesses.

Like all good conspiracy theories, this one forces all who would deny it to prove a negative—to prove that something did not happen. As any logician can testify, proving a negative is ultimately impossible. Equally disturbing, the October Surprise theory has now become complicated and so hideously detailed that no reasonable person can say with absolute certainty that there was no conspiracy and no deal. But Newsweek has found, after a long investigation including interviews with government officials and other knowledgeable sources around the world, that the key claims of the purported eyewitnesses and accusers simply do not hold up. What the evidence does show is the murky history of a conspiracy theory run wild.

GOING MAINSTREAM: A STORY IS BORN

Washington in the fall of 1980 was, like the rest of the United States, obsessed with the U.S. Embassy hostages in Iran. It was a national crisis: Public officials, the voters and the news media were grasping at every rumor. Jimmy Carter, then running for a second term, was almost completely preoccupied by obscure events half the world away; so was the Reagan campaign. In April, the Carter administration launched a desperate military gamble to extract the hostages from captivity, and failed, miserably, in the smoking wreckage at Desert One. The campaign proceeded: Carter turned back Edward Kennedy's challenge in the Democratic primaries, and Reagan dispatched George Bush. The hostage crisis, seemingly at an impasse, continued to simmer amid the hullabaloo of an election campaign. The election came and went, with Carter's landslide defeat—and in December, with the hostages still held in Iran, rumors of some sort of backstage contract between the Republican campaign and the Iranian government first appeared in print.

The outlet was hardly prestigious: the Executive Intelligence Review, a periodical published by followers of right-wing political extremist Lyndon LaRouche. On Dec. 2, 1980, EIR ran a story alleging that former secretary of state Henry Kissinger, a target for LaRouche followers, "held a series of secret meetings during the week of Nov. 12 in Paris with representatives of Ayatollah Beheshti, leader of the fundamentalist clergy in Iran." This was attributed to "Iranian sources" in Paris. The article continued: "Top level intelligence sources in Reagan's inner circle confirmed Kissinger's unreported talks with the Iranian mullahs, but stressed that the Kissinger initiative was totally unauthorized by the president-elect. 'If you know any way of controlling that man,' said one Reagan insider, 'please let me know'." (Kissinger said the EIR report was "totally untrue.")

The story said that this meeting was the climax of a prior liaison: "* * * it appears that the pattern of cooperation between the Khomeini people and circles nominally in Reagan's camp began approximately six to eight weeks ago, at the height of President Carter's efforts to secure an arms-for-hostage deal with Teheran. Carter's failure to secure the deal, which a number of observers believe cost him the Nov. 4 election, apparently resulted from an intervention in Teheran by pro-Reagan British intelligence circles and the Kissinger faction."

EIR said that its source "stressed" that those involved in this effort "did not have the approval of Ronald Reagan himself." Fast-forward to 1983, when the LaRoucheans returned to the story. An article in the Sept. 2 issue of their journal New Solidarity gave more detail. "During the pre-election period, Carter and his crowd were frantically trying to negotiate a deal based on arms and spareparts shipments, which Iran desperately needed after the outbreak of war with Iraq on Sept. 22 * * * The deal * * * fell through when the hard-line mullahs boycotted the Majlis in late October. Ayatollah Beheshti—known as the most pro-Soviet of the mullahs—was the key mover behind this."

When the story got its next boost—in an April 1987 article in The Miami Herald—it was from former Iranian president Abolhassan Bani Sadr, by now in exile in Paris. Bani Sadr "said he learned after the hostage release that two of the Ayatollah Ruhollah Khomeini's advisers had been involved in negotiations with the Reagan camp. The negotiations were to delay release of the hostages until after Reagan became president * * * The former president identified the two as Hashemi Rafsanjani [now himself Iran's president] and Mohammed Beheshti." Bani Sadr said he had asked both men about this. "They laughed,' he said. "They didn't say no'."

The Herald's story didn't get much play. But when Bani Sadr next spoke, to Flora Lewis of The New York Times in August 1987, the story grew. With The New York Times, Bani Sadr was more specific than he had been with The Miami Herald. He said negotiations with the Carter administration had been going well. "But then in October, everything suddenly stopped. My aides found out it was because the group in charge of the hostage policy, Rafsanjani, Mohammed Beheshti and Khomeini's son, did not want Carter to win the election. There was a meeting in Paris between a representative of Beheshti and a representative of the Reagan campaign." These and subsequent events, Lewis wrote, "confirm for him persistent rumors that the Reagan campaign offered arms if the hostages were not released until after the 1980 election. * * *" The story had finally made it into the mainstream.

The timing was propitious—high summer, so to speak, for conspiracy buffs. The reason was the Iran-contra scandal, which proved that the Reagan administration had indeed engaged in secret dealings with Iran. Although the exact starting point of those secret negotiations remains obscure to this day, it seems clear that the roots of Iran-contra run deeper than anyone has been able to document publicly. The Reagan White House, it seems clear, was obsessed by Iran during the early 1980s. Iran-contra also showed that the administration was eager to engage in covert action, and that it was ready to lie, destroy documents and cover up a range of covert activities that violated the law.

Contragate, in short, created fertile ground for the October Surprise theory. Reporting in November 1987, the joint investigating committee created by the House and Senate relegated the October Surprise rumors to a footnote. "There have been allegations that officials of the 1980 Reagan campaign—in order to prevent a pre-election announcement by President Carter (an 'October Surprise')—met with Iranian emissaries and agreed to ship arms to Iran in exchange for a post-election release of hostages," the report stated. "Reagan campaign aides were, in fact, approached by individuals who claimed to be Iranian emissaries about potential release of hostages, as were other campaign staffs. The committee was told that the approaches were rejected and found no credible evidence to suggest that any discussions were held or arrangements reached on delaying release of hostages or arranging an early arms-for-hostages deal."

It is likely that the October Surprise would have died somewhere in late 1987, except for the appearance of a group of apparently knowledgeable, conspiracy-minded "super-sources." Journalists are vulnerable to the lure of a super-source—another Deep Throat, someone who knows all and pieces everything together in a nice, neat package. In the October Surprise case, there are four would-be Deep Throats: Barbara Honegger, Richard Brenneke, Jamshid Hashemi and Ari Ben-Menashe. At some point each has claimed first-person knowledge of the conspiracy. The stories they told overlapped in broad outline—and in some cases, they compared stories, swapped details and helped each other become more convincing. Journalists committed to the notion of the October Surprise often acted as a conduit between them.

Barbara Honegger: Honegger was a researcher in Reagan's 1980 campaign and worked at the White House and the Justice Department until 1983. In summer of 1987, Honegger claimed that in late October 1980, in the Reagan campaign headquarters in the Washington suburb of Arlington, she had heard a jubilant staffer say, "We don't have to worry about an October Surprise. Dick cut a deal." Dick, presumably, was Richard Allen, the Reagan campaign's top foreign-policy adviser and subsequently Reagan's first national-security adviser. It was the first confirmation from inside—a bull's-eye for the conspiracy theorists and the journalists who were following their trail.

But there were several problems. The most basic was that Honegger was never able to identify this alleged staffer or say whether she had any reason to believe the staffer knew what he was talking about. The second was that Honegger, who published a book, "October Surprise," in 1989, herself seemed to have some difficulty in separating fact from fiction. Even Christopher Hitchins, a

columnist for The Nation magazine and a sometime proponent of the October Surprise theory, said her exposé was "diffused and naive."

Richard Brenneke: A businessman from Portland, Ore., Brenneke claims to have worked for the CIA for 18 years as a contract operative. He met Honegger in August 1988 in Washington, where she told him about her theories on the October Surprise. Brenneke, astonishingly enough, claimed he had been present when the deal was done. He said the meeting had taken place in Paris, at the Hotel Raphael, on Oct. 19, 1980. And Brenneke confirmed what Honegger already thought: William Casey, then Reagan's campaign manager and later CIA director during Iran-contra, had represented the Reagan-Bush campaign. Donald Gregg, then a member of Jimmy Carter's National Security Council staff and later a national-security adviser for Vice President Bush, had been there, too. The Iranians were two arms dealers, Manucher Ghorbanifar and Cyrus Hasehmi.

Then, two weeks later, Bani Sadr expanded his previous story. In Playboy magazine, Bani Sadr made the most surprising charge so far—George Bush was also present in Paris. (In a scathing story on the October Surprise, The New Republic reported last week that Bani Sadr has now retracted his claim that Bush was present.) Brenneke said he, too, could confirm that Bush was in Paris—and he said so, under oath, in Denver on Sept. 23, 1988.

Brenneke was testifying on behalf of Heinrich Rupp, 58, a pilot and gold dealer who had been convicted of bank fraud. Rupp was an old friend, Brenneke said, the two had been involved in covert ops for the CIA. Brenneke gave sensational testimony. He said he had worked for the CIA for 18 years, until 1985. He said that on Oct. 19, 1980, Rupp had flown "Mr. Bush, Mr. Casey and a number of other people to Paris, France, from the United States for a meeting with Iranian representatives." Brenneke said he had been directly involved in one of what he said were three meetings with the Iranians. He listed the Americans as Bush, Casey, Donald Gregg and Richard Allen. He said the Iranians included Hashemi Rafsanjani, who was then speaker of the Iranian Parliament and now president of Iran, and Cyrus Hashemi.

Brenneke's testimony made news—and among those who read it, with mounting fury, was the investigator from Sen. John Kerry's subcommittee, Jack Blum. Blum has spent thousands of hours checking what Brenneke had told him and had begun to believe that Brenneke was a fraud. The final proof, for Blum, came when be read Brenneke's assurance to the judge in Denver. "I will say, your honor, I have made these statements to Senator Kerry's committee and the United States Senate—again, under oath. * * *" Blum knew that was not true: Brenneke had never mentioned any involvement in the October Surprise. Blum pressed the U.S. attorney's office in Denver to file perjury charges, and Brenneke was indicted in May 1989.

The trial, in April 1990, pitted Brenneke against the U.S. government—and the government lost. Donald Gregg, now U.S. ambassador to South Korea, testified he had not been in Paris on Oct. 19 or 20, 1980. Two of Casey's former secretaries said he had not been out of the country at that time. Two Secret Service agents said they were guarding Bush on the campaign trail when the meetings allegedly took place. A CIA records specialist said there was no trace that Brenneke had ever worked for the agency. But the government's case was sloppy, and Brenneke's lawyers played on the jury's doubts so skillfully that Brenneke was acquitted. In the process, he said he never meant to testify that he had actually seen Bush in Paris—only that he had been told Bush was there.

Ari Ben-Menashe: Ben-Menashe first surfaced as an October Surprise source in 1990, while he was being held in a federal prison in New York City on charges of attempting to sell U.S.-made military transport planes to Iran. Tried in October, he was acquitted after maintaining he had the secret approval of both the Bush administration and the Israeli government. Although Israeli officials deny it, Ben-Menashe claims he was an Israeli intelligence agent and an adviser to Prime Minister Yitzhak Shamir.

Like Richard Brenneke, Ben-Menashe has been interviewed many times by journalists looking into the October Surprise (Newsweek, Nov. 4). Ben-Menashe says he, too, was in Paris on Oct. 19–20, 1980, as a member of a six-person Israeli team that helped set up the meeting. He says he saw Bush and Casey there, and that they were accompanied by Robert Gates, who is now George Bush's nominee as CIA director. He says the Iranian delegation was led by the Ayatollah Mehdi Karrubi, not Cyrus Hashemi and Manucher Ghorbanifar. He told Newsweek that the meeting took place at the Hotel Ritz, not the Raphael or Crillon as Richard Brenneke claims; he also told another investigator, Israeli author Shmuel Segev, that the meeting was held at the Hotel George V. ABC News gave Ben-Menashe a lie-detector test in November 1990; according to Christopher Isham, an ABC producer, Ben-Menashe failed it.

Jamshid Hashemi: Jamshid Hashemi is a younger brother of Cyrus Hashemi, an Iranian arms dealer who died in London in 1986. Jamshid has been a source for ABC News and for "Frontline," the PBS documentary program. He claims that he, his brother Cyrus and Karrubi met William Casey in a hotel in Madrid in July 1980, to begin negotiating a secret deal with the Reagan-Bush campaign. There is at least some corroborating evidence for this claim. For one thing, knowledgeable officials agree that Cyrus Hashemi played a minor role during the hostage crisis—offering to help establish communications between the Carter White House and Iranian leaders. For another, as ABC-News reported, the register at the Madrid Plaza Hotel actually shows that "A. Hashemi" and "Jamshid Halaj" were registered as guests at the time in question, late July 1980.

MEETINGS AND MIXED MESSAGES

There are, of course, myriad further details to these shifting and mutually contradictory allegations. But the essentials are clear. There were two sets of meetings, the first between Karrubi, the Hashemi brothers and William Casey in Madrid, and the other in Paris in October. The second meeting involved either Casey and Gregg—or Casey, Bush and Gates—on the American side. On the Iranian side, depending on which "witness" is believed, it involved either Cyrus Hashemi and Manucher Ghorbanifar or the Ayatollah Karrubi. Bush, Gates and Gregg have all denied that they were in Paris on those dates, and that they ever tried to arrange a deal with any Iranian leaders. Casey is of course dead. So is Cyrus Hashemi. Ayatollah Karrubi has denied ever visiting Madrid.

A team of Newsweek correspondents has spent much of the past eight weeks exploring the evidence for these allegations. The Newsweek team believes that:

Casey did not go to Madrid. Jamshid Hashemi told his story at length to PBS's "Frontline" series in April and to ABC's "Nightline" in June. He would not appear on camera for either program, and he did not reply to Newsweek's requests for an interview. He alleges that in March or April 1980, Casey made contact with Cyrus and himself while the pair were on a visit to Washington. Casey, he says, wanted to establish contact with an Iranian who was close to Ayatollah Khomeini. The brothers agreed to act as go-betweens. The meeting took time to set up, but in July, Cyrus asked Jamshid to bring the Ayatollah Karrubi from Teheran to Madrid to meet with Casey. According to Jamshid, Mehdi Karrubi arrived with his brother Hassan.

They talked with Casey over two consecutive days, Jamshid says—two morning sessions of some three hours apiece. Then in August, Jamshid says, there was a second meeting between Casey and Karrubi, also in Madrid. After an exhaustive search of press reports, of Casey's diaries and of the diaries of his colleagues, ABC's "Nightline" reported that there was a three-day window—July 27, 28 and 29—during which Casey's whereabouts were unknown. On the 30th, ABC reported, Casey was being interviewed by an ABC correspondent at Reagan campaign headquarters and dined that night with Bush in Washington.

But Casey's whereabouts during the July "window" are convincingly established by contemporary records at the Imperial War Museum in London. Casey, it turns out, took a three-day breather from the campaign to participate in the Anglo-American Conference on the History of the Second World War. As a veteran of the Office of Strategic Services—the forerunner of the CIA—Casey delivered a paper on OSS operations in Europe during the war. He went to a reception for conference participants on the evening of July 28, and he was photographed there. He delivered his paper on the morning of July 29.

ABC News acknowledged these facts in an update later in June—but still maintained that Casey had enough time on July 27 and 28 to fly to Madrid to meet with the Iranians. A close examination of the conference records by Newsweek, however, demonstrates that Casey in fact was present at the conference sessions in London on July 28. Historian Jonathan Chadwick, who organized the conference, kept a precise, day-by-day and session-by-session record of who was present and who was not. According to Chadwick's records, Casey was present at 9:30 a.m. on the 28th, stayed for the second morning session, leaving after lunch and returning at 4 p.m. He was also present, of course, on the 29th, when he delivered his paper. "I was very excited that such a big man was coming, but it turned out to be a disappointment," Chadwick said. "He just talked it through in a very gravelly voice. He came over as a very tough sort."

There are records showing where Casey slept and ate as well—at the Royal Army Medical College, close to the Imperial War Museum. Officials there say they have a bill in the name of "W. Casey" charging him for a room on the nights of July 27 and 28, and for "messing"(eating a meal) on the 28th and 29th. There is, in short, no possibility that Casey could have held meetings with anyone on two successive days in Madrid.

Finally, there are large questions about Jamshid's story. He told ABC's Ted Koppel, for instance, that he and Cyrus made big profits in the arms trade as a direct result of

the meeting in Madrid. But there is little evidence that the Hashemis had much money to spare. Elliott Richardson, who was Cyrus Hashemi's attorney in a 1984 arms-smuggling case, said that Cyrus seemed to be dealing in a "remarkably petty" quantity of arms.

The Paris meeting did not occur. The vast discrepancies between Ben-Menashe's account and Brenneke's account show, at the very least, that one of the two men is lying. But the weight of evidence suggests that both versions are false.

Ben-Menashe has changed his story repeatedly: did it happen at the Ritz, as he told Newsweek, or at the Hotel George V, as he told Shmuel Segev? He is also confused about the dates. In an interview with Newsweek, Ben-Menashe said he was sure it was Oct. 19 or Oct. 20 because it was close to the Jewish festival of Sukkot. Sukkot, a movable feast, occurred on Sept. 25 in 1980.

There is reason to believe, meanwhile, that Brenneke was nowhere near Paris on Oct. 19–20, 1980. The evidence consists of Brenneke's own credit-card receipts and desk diary for that period of time. According to a recent story in New York's Village Voice newspaper by Frank Snepp, a former CIA agent who is now a freelance journalist and investigator, Brenneke's credit-card receipts show that he stayed at a motel in Seattle, Wash., from Oct. 17 to Oct. 19. His desk calendar, Snepp also reported, showed that he was home in Portland on Oct. 20. These records, Snepp said, were shown to him by Peggy Adler Robohm, a writer who at first admired and wholly believed Brenneke's stories. Robohm got the records from Brenneke himself, during a short-lived collaboration on his autobiography. Fearful of being caught in a literary fraud, Robohm ended their collaboration last summer.

(Brenneke did not return repeated calls from Newsweek. But one of his lawyers, Mike Scott, said Snepp's story was false.)

There is, finally, solid evidence that George Bush did not go to Paris on Oct. 19–20, 1980—the U.S. Secret Service logs recorded where candidate Bush was on those days. Those logs show that Bush campaigned in New Jersey and Pennsylvania on Oct. 17, and that he went to the Chevy Chase Country Club, outside Washington, during the day on Oct. 19. They also show that he delivered a campaign speech before the Zionist Organization of America at a Washington hotel that night. The logs show that he returned to his home at about 9:30 on the night of the 19th. The next day, Oct. 20, the Secret Service logs and press reports both record that Bush was back on the campaign trail in New Haven, Conn. Given the travel time involved, there is no reasonable possibility that he could have flown to Paris, met the Iranians and returned to the United States in that time period.

These details may or may not convince conspiracy theorists who cling to the October Surprise—just as the Warren Commission report failed to convince a whole generation of would-be investigators that Lee Harvey Oswald, acting alone, killed John F. Kennedy. But the evidence on Bush and Casey's whereabouts—and on the bona fides of their accusers—must also be considered against the broad history of U.S.-Iran relations in the 1980s. Indeed, the October Surprise theory rests on two broad-brush assumptions that are highly suspect.

One is the notion that Iran must have gotten U.S. weapons from the Reagan administration in return for delaying the hostages' release. Despite the record of the Iran-contra scandal, however, there is oddly little evidence of any substantial weapons "payoff" to Iran. An authoritative analysis by the Stockholm International Peace Research Institute shows that Iran spent approximately $5 billion on arms between 1980 and 1983—and $3 billion of that total went for military equipment from communist-bloc countries. It is true, apparently, that Israel supplied Iran with $50 million worth of spare parts for U.S.-built F-4 Phantom jets in the spring of 1980. But $50 million is chicken feed for swinging a U.S. presidential election. And Iran never got spare parts for its more potent F-14s, which rarely flew during the Iran-Iraq War but which could well have deterred Iraqi air attacks on Teheran and other cities. Only the United States could have provided the parts. Arms dealer Ian Smalley, who made a fortune selling weapons to Iran, says he does not believe that the Reagan administration cut a deal. "If the U.S. had been in the market, we would have been out of business," Smalley said.

A second pivotal notion is that secret negotiations on the hostage issue between the Carter administration and the Iranian government inexplicably broke down during October 1980. (Gary Sick, among others, places great emphasis on this fact.) But Iranian leaders were arguably distracted by the outbreak of the Iran-Iraq War, which began on September 22. In a report for the Council on Foreign Relations, former Carter administration official Harold Saunders argues that the war "diverted and absorbed the attention of Iran's leaders"—and Saunders said that only "skillful management" by Rafsanjani got the Iranian Parliament to resolve its disagreements on the hostage issue. If, as some October Surprise proponents have claimed, Rafsanjani participated in the alleged secret deal with the Reagan campaign, why did he try to resolve the hostage impasse while Carter was still in power? Then, too, many Iranians hated Jimmy Carter. Eric Rouleau, who is now France's ambassador to Turkey, was a journalist in Teheran at the time. Rouleau, who knew many Iranian leaders personally, says he heard no gossip about any pending deal with the Reagan campaign. But the Iranians were well aware that releasing the hostages could help Carter win the election—and Rouleau says there was "a lot of discussion, lots of declarations, to the effect that the Iranians would never give any kind of 'gift' to President Carter."

There is, finally, one tantalizing coincidence in the secret record of the hostage crisis. On July 1, or July 2, 1980, Cyrus Hashemi met with a member of the Iranian leadership at the Ritz Hotel in Madrid. He was, apparently, acting as a go-between for the Carter administration, which by then was desperately seeking some new avenue to reopen the hostage negotiations. (That meeting, Newsweek sources say, led to a last-ditch diplomatic initiative by Secretary of State Edmund Muskie in September.) Within a week, according to Bani Sadr's diaries, Bani Sadr was told by the Ayatollah Khomeini's nephew that Iran had been approached by Reagan's men with a proposition on the hostages. The meeting site—Spain—was mentioned. Could it be that the ayatollah's nephew confused Reagan with Carter—and that the whole notion of the October Surprise stems from that simple mistake?

CONGRESSIONAL TERM LIMITS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from California [Mr. COX] is recognized for 5 minutes.

Mr. COX of California. Mr. Speaker, in 1991, term limits in various forms were introduced as bills in 45 States, according to the National Council of State Legislatures.

In 1992, at least 11 States are expected to have congressional term limit initiatives on their ballots, and the number could go as high as 18.

The California Supreme Court on October 10 upheld my State's 1990 election initiative imposing term limits for State legislators, and the reasoning of that decision on constitutional grounds applies across the board potentially to all of us in this Legislative Chamber.

Right now across America, sentiment is running high in support of term limits, for one fundamental reason. People frankly are fed up with business as usual. They are fed up with our high deficits. They do not believe that they are getting enough out of government in return for the very high and increasingly higher taxes that they pay.

Tomorrow in Washington State, initiative 553, by far the toughest term limit measure yet, will be on the ballot. Polls have shown support for it as high as 73 percent among those surveyed.

Many of my colleagues believe that term limitations for Members of Congress are a bad idea. I am not one of those, but I understand their reasoning.

Recently legal counsel for the House of Representatives was asked by a Member to file a brief and he spent, it is estimated, $25,000 of public funds doing just that. The brief was filed—I have it here—before the Supreme Court of Florida. It argues that term limitations imposed by States are unconstitutional, violative of the U.S. Constitution.

Frankly, Mr. Speaker, I believe that it is unwise for this House and this body, certainly without a vote of the Members to determine our collective position, to argue in Florida, in Washington or anywhere else, that if voters and States want to act to limit, consistent with their own constitutions and I believe the U.S. Constitution, the terms of Federal office holders, that we should tell them they cannot do so.

In fact, I believe it makes this institution look bad.

Today in the Washington Times, we have a headline, "House Haunted by Another Perk," and the suggestion is that by tapping into the House Legal Counsel free of charge to make political arguments in a case where none of us is a party, and perhaps we would not even have standing if we sought to make ourselves party, we are able to take advantage of the taxpayers' funds, just as we have done—not this Member personally—but just as the House has been called on the carpet collectively for bouncing checks, not paying res-

taurant bills and other perquisites, beauty shops, and barber shops and so on. This does not reflect well on our House at a time when we are unable to extend unemployment benefits, at a time when we are asking the people of America to pay more taxes to subsidize what turns out to be even more deficit spending.

This year it is anticipated our deficit will be, 1 year only, not only the highest in American history, but over $350 billion.

I submit that it is the poor performance of the National Legislature as a whole that is calling into question incumbency, permanent incumbency, and thus driving people to term limits.

I think it would behoove us to get busy doing our jobs and doing a better job and getting some results for the American people for the taxes they pay, and we would not have to worry so much about these term limit initiatives looking over our shoulders.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. COX of California. I yield to my colleague, the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, the gentleman from California [Mr. COX] has been kind enough to show me the brief in question.

As I understand it, we have a case pending in the Florida court regarding the legality or constitutionality of the Florida Legislature passing legislation that limits terms of Members of the U.S. House of Representatives.

Mr. COX of California. That is correct.

Mr. ARMEY. And the brief in question is what is called an amicus curiae, or friend-of-the-court brief.

Now, the fact is I could submit such a brief—is that not correct?

Mr. COX of California. In fact, any American could.

Mr. ARMEY. Any American citizen could?

Mr. COX of California. Yes.

Mr. ARMEY. So that as a citizen of the United States, if I wanted to go out and hire a lawyer to prepare such a brief, I could do so, and nobody is contesting that; but what the gentleman from California is telling me is that at the request of a Member of this body from the State of Florida, the paid legal counsel for the House of Representatives, an officer of the Congress compensated for his services by the taxpayers, actually used his time and the time and resources of his office to prepare this brief on behalf of a Member of Congress from Florida, is that correct?

Mr. COX of California. That is exactly right.

ORDER OF BUSINESS

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to proceed now out of order for 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

□ 1940

TERM LIMITS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from Texas [Mr. ARMEY], is recognized for 5 minutes.

Mr. ARMEY. Mr. Speaker, I will be brief.

The gentleman from California [Mr. COX] and I have different points of view about whether or not there should be term limits. I happen to believe it is a denial of the rights of the American voters to impose that restriction on service in Congress. That is another point to debate.

But the point the gentleman makes, if I may make it clear, the gentleman is raising the point that a Member of the House of Representatives ought not to be allowed to use the resources of the Congress which are in fact the resources of the American people to prepare a brief, a friend-of-the-court brief, to be submitted before the Supreme Court of the State of Florida with respect to a very, I think, intriguing constitutional question where the Member from Florida has a very personal political stake in the matter, as opposed to going out and hiring his own attorneys or going through some other private means to acquire legal assistance.

Mr. Speaker, I yield to the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman for yielding. I think that the gentleman from Texas has hit the nail on the head. There is plenty of room for disagreement about, first, the wisdom of term limits and, second, the constitutionality of State-imposed term limits under the U.S. Constitution.

That is precisely the point. Out of 435 Members of Congress, we have all sorts of differing opinions as a body. The House of Representatives cannot take a position, certainly not without a vote, for or against a deal like this. I think it, frankly, all behooves us to do so because we are getting headlines like this: "House Haunted by Another Perk." An individual Member, going out and doing this without a vote.

So what I have done is ask for a recorded vote of the entire House, and we will have that, the majority leader and the Chair have ruled that we will have that on Wednesday. We will have a full hour of debate, and each of us can go on record on the subject of whether or not we ought to have our legal counsel fighting the voters in the various States.

Mr. ARMEY. Mr. Speaker, I happen to believe, I might observe, that the American peanut program in our agricultural program is a bad program that ill serves the American people. Dare I to presume now from this incident that I might ask the general counsel of the U.S. House of Representatives to prepare an amicus curiae brief for me on behalf of my contentions against the American peanut program? Does the gentleman from California suppose that, should I make such a request, that it would be honored and I could have the advantage of $25,000 worth of the House of Representatives legal services for me to file such a brief?

Mr. Speaker, I yield to the gentleman from California.

Mr. COX of California. I think, on its face, that is a silly idea. I hope, on its face, notwithstanding that I think your position is a sound one, that the counsel would not write such a brief. The fact that each of us as Members has the opportunity to advance good ideas and bad ones, the American people likewise as voters ought to have the opportunity to come up with good ideas or bad ideas. It should not be the business of this body to stop them from doing so.

Mr. ARMEY. I thank the gentleman for at least not saying that it was a nutty idea.

Mr. Speaker, I yield to this gentleman from California [Mr. DREIER].

Mr. DREIER of California. I thank my friend for yielding. I would like to congratulate my friend from Newport Beach, the gentleman from California [Mr. COX], who has come forward with what I think is a very important resolution. What this apparent development simply underscores once again is the power of incumbency. My friend has showed us an article, which frankly I have not seen—it looks like the Washington Times.

Mr. COX of California. It is today's Washington Times.

Mr. DREIER of California. It talks about another perk. The mere existence of another perquisite of office means that we are simply enhancing the power of incumbency.

I find it ironic that the power of incumbency is being utilized to perpetuate incumbency, an attempt to try to defeat those who would want to impose some kind of term limitations on Members of this House, out of a sense of frustration, is being responded to with this extraordinary power that exists here. I think it is something that we as a House need to address, and I congratulate my friend for working on it.

Mr. ARMEY. If I may reiterate my point, I happen to believe that we ought not to impose limits on the terms of service in the House of Representatives. But the point that the gentleman is raising, should an individual Member of Congress be able to use some significant amount, 25,000 dollars' worth of legal services of the House of Representatives, to prepare a brief

when in fact Congress itself has taken no position?

Mr. Speaker, I yield to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I think the gentleman from Texas would be in a better position to get a brief done on the peanut program, because it is something we have addressed in this House, than we would on an issue which has not been addressed in this House, designed to encourage the power of incumbency.

Mr. ARMEY. Mr. Speaker, I yield to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. I thank the gentleman for yielding.

I would like to add a couple of other points here between the lines of the comments made by my distinguished colleagues in terms of identifying and pointing out the latest outrage to the American people. This does not qualify as the outrage of the week, this qualifies as the outrage of the month. It again demonstrates the arrogance of incumbency and corruption of the ruling party, the majority party in this House, and the rules by which we proceed.

I simply want to point out that, as I understand it, and I will ask this of my colleague, the House Legal Advisory Committee—we have such an organization, but as a new Member of this body I am not clear what the function of that committee is—but my understanding is they specifically rejected the request from the Speaker to prepare such a brief, and apparently subsequent events bypassed this committee altogether.

Mr. ARMEY. I yield to the gentleman from California.

Mr. COX of California. There is in fact a report in Roll Call of Monday, November 4, a story that describes that there was a division among the Democratic leadership of the House on the one hand and the Republican leadership on the other hand. The Republicans were opposed to using legal counsel in this fashion.

THE APPALLING COST OF THE RTC'S HASTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. MCCOLLUM] is recognized for 5 minutes.

Mr. MCCOLLUM. I thank the Speaker.

Mr. Speaker, I am not here to address the term limit issue, although I have been fascinated by it, since I happen to be a very strong proponent of limiting terms, as some of the gentlemen are here today. I certainly do not think that that $25,000 should have been used in my State. I look forward to the debate on Wednesday.

Mr. Speaker, I yield briefly to the gentleman from California.

Mr. RIGGS. I do not want to make the gentleman lose his train of thought nor eat into his time, because I know he has a very important point to make, but the gentleman is probably too modest to point out that he is the author and primary sponsor of term limits registration now pending in this House. In fact, if I am correct, it is languishing in the Committee on the Judiciary Subcommittee on Constitutional Law.

Mr. MCCOLLUM. The gentleman is correct.

Mr. RIGGS. That is since January 3, the first day of this session. And if this body wanted to have an open, honest debate on the substantive merits of the term limits idea and all the various nuances of that legislation, we could do so in the House Judiciary Committee.

Mr. MCCOLLUM. If I may reclaim my time, I thank the gentleman for pointing that out even though it is not the reason for my special order. My amendment proposal has been languishing since January 1981, when I first introduced it in every Congress, in that subcommittee, with no real debate here. So I think it is great that the States are debating this. I think it is wonderful that initiatives are being put on the ballot. I agree with all my colleagues tonight in discussing it, that the House counsel should not be used to argue one side or the other of this, because the House is truly divided.

So I look forward to that debate on Wednesday. I think the gentleman made a very good point about the term limit issue.

Mr. Speaker, I yield briefly further to the gentleman from California.

Mr. RIGGS. If I may sum up my point, which is that the House counsel, upon the direction of the leadership of this body, has seen fit to effectively circumvent both the House Legal Advisory Committee as well as the House Judiciary Committee where again we do have the gentleman's legislation on term limits pending before the Congress.

Mr. MCCOLLUM. The gentleman makes a very fine point, and I thank him for doing so.

The primary reason, Mr. Speaker, for my taking this special order today—not realizing we were going to get into the other issue—is an article that appeared in today's Wall Street Journal, and I would like to call the House Members' attention to this. It is called "The Appalling Cost of the RTC's Haste," by C. Daniel Clemente. Mr. Speaker, I will place the full article in at the end of my special order.

Mr. Speaker, Mr. Clemente is making a point that I think very, very important regarding what is happening with the Resolution Trust Corporation dealing with what they are doing with properties, particularly real estate properties that they have obtained as a part of their responsibilities in closing failed thrift institutions, savings and loans.

I think all of us in this body know that those that have been involved in any fraud or any kind of mismanagement or self-dealing in the savings and loan area, that those institutions ought to be closed and the perpetrators, if there is criminal activity in which they have been engaged, ought to be prosecuted and so on.

□ 1950

Mr. Speaker, the issue that the author of this article raises though is: "What's happening in those cases where it is being closed," and he is also asking about why we need to be closing all of the institutions we are where there has been no fraud, or mismanagement or self-dealing, and I think he makes an excellent point about the impact of this on real estate in America and the tremendous cost to us as taxpayers by the devaluation of real estate by so much sales that are going on today by the RTC at values that are far below normal market values for real estate.

He raises, further, the question of, if we are going to sell under a policy of liquidating as quickly as possible these assets, what is that going to mean in terms of the some $300 billion in real estate loans that are due over the next 2 years that cannot be refinanced at present loan amounts because of the decline in value associated with the dumping of this property on the market at one time?

In other words, Mr. Speaker, he challenges a basic policy of those who are leading us through the RTC, and at the same time he asks Congress, "What are you meaning by all of this? Why are we seeking out $80 billion in new monies for covering losses that would be incurred in the process of all of this disposition of property in the closing of thrifts when a lot could be saved if we would just hold on to that real estate or devise methods where it could be held on to longer rather than being dumped on the market, and why," Mr. Clemente asks, "are we not using professional real estate management, people who know the development business, to dispose of these properties and to make these kinds of decisions?"

Mr. Speaker, I do not submit that everything that is in this column is something I embrace. I do not think all of the solutions he suggests are probably valid. I also do not submit to my colleagues that everything RTC is doing in this area is wrong. But I do submit that what the author is saying has a lot of truth to it and that in the next few days, as we have to face the question of funding the Resolution Trust Corporation for huge amounts more of money, we ought to be questioning the law as it now exists. We ought to be questioning the policy as it now exists. And I do not think we should be offering up billions more to RTC until we get the right answer to

this and until, I think, in many cases, or at least in several, that we change the law so that the cost is not that great, that the cost is not that great in terms of appropriated moneys by this body, and, as important and perhaps more importantly, that the cost is not that great in the devaluation of real estate values in this country and the results of what it does to the refinancing of real estate loans and the problems that are going to be created for the long haul if we take this much value out of real estate in this country, especially during a time of recession.

So, with that in mind, Mr. Speaker, that is why I have come forward for this special order time. As I indicated under the unanimous consent request, I submit a copy of this article: "The Appalling Cost of the RTC's Haste."

The article referred to is as follows:

[From the Wall Street Journal, Nov. 4, 1991]

THE APPALLING COST OF THE RTC'S HASTE

(By C. Daniel Clemente)

The Resolution Trust Corp's liquidation of the property of failed savings and loans is turning into the greatest peaceful redistribution of wealth in modern times. But the redistribution is not going from the wealthy to the middle class, or even from the middle class to the wealthy, but rather from the middle class and the wealthy to the superrich and to big business.

The RTC understands its mandate to be rapid liquidation of the real estate that has come into the government's hands. In order to sell fast, it has taken to selling its commercial real estate in bulk. But this decision has social consequences—especially since there is no financing available today for those willing to speculate on the purchase, development and improvement of real estate. When you offer property for sale in packages of $300 million, cash only, who do you suppose the buyers will be?

CONTROL OF REAL ESTATE

Real estate values and the real estate industry have been among the prime victims of this unintended social revolution, for two reasons: First, the RTC's huge financial needs have made credit unavailable to the industry as a whole, Second, it has taken control of the nation's largest group of real estate transactions out of the hands of the private sector and turned it over to a bureaucracy.

From my personal experience, this bureaucracy has been predominantly staffed by individuals whose professional background has either been in the Division of Liquidation of the Federal Deposit Insurance Corp, or in failed savings and loan associations. Individuals with those backgrounds maybe have great experience in the mechanics of acquiring and disposing of real estate. But the heart of the industry, the essence of the value of real estate, lies in the entrepreneurial developer's unique understanding of a particular piece of property and, most important, his understanding of the marketplace where the real estate is located, together with the laws, ordinances and regulations peculiar to its jurisdiction.

This crucial perspective is nowhere to be found at the RTC. The result is that the cost to the taxpayers of the S&L liquidation far exceeds what it would have been if management and control of the operation had been entrusted to people trained and motivated to realize the highest utility and value of property.

A developer wants to maximize the utility of a piece of property in as short a period of time as possible. A liquidator wants to dispose of the property as quickly as possible. But disposing of property as quickly as possible simply is not compatible with maximizing value, or even with minimizing loss.

To see these tendencies at work, look at the case of one specific project, Potomac Crossing, a planned unit development in the town of Leesburg, Va.

The property was purchased in late 1986 by a Virginia developer whose plan included design and construction of all necessary streets, sewer lines, water service, curbs and gutters and electrical service. Work was begun in the fall of 1987 and was to be accomplished in three phases. The original developer was able to complete phase one. Today, approximately 318 families live in Potomac Crossing. The total value of the homes sold in phase one exceeded $45 million.

In April 1990, United States Bank of Vienna, Va., acquired the uncompleted portion of the project, and brought in my firm as consultants to review the project and create a business plan. We determined that to maximize the return on the sale of the land, it would be prudent to complete the engineering work. This would enable us to obtain final site plan approval for the subdivision of all land in phases two and three into building lots. Because the engineering design work takes many months and because the approval process is so lengthy, taking property through the process to final approval adds great value to the property. We also advised United Savings Bank to commit the funds necessary to complete construction of the sewer line that would serve phases two and three.

Then, in August 1990, United States Bank was placed in conservatorship. The RTC became the owner of the property. It elected not to proceed with any further work on the land. Today, the RTC is holding 213 acres of ground that has no access to sewer lines and on which essentially no engineering work has been performed for more than a year. If we assume that it would take 60 days to complete the engineering drawings for those 213 acres, it is my estimate that it would take a total of at least 11 months to complete all the engineering work. In the year that has elapsed since it took it over, the RTC could have completed all the engineering work on the property.

Instead, it appears that this property will be sold by the RTC without any further engineering work being done, and without the sewer being bonded because of the uncertainty created by the RTC. The town of Leesburg insists that no additional lots can be recorded in Potomac Crossing until bonds have been posted to guarantee sewer construction. That means the property will have to be sold as acreage rather than as lots, and as acreage with no present access to sewer services.

In the meantime, the preliminary plan approval granted by the town is about to expire. Since the original preliminary plan was approved, the town has altered its design standards for public facilities. Engineering to meet the new design standards will cost an extra $440,600—money that could have been saved had the RTC finished the job bank in 1990.

Further, by interrupting construction of the sewer, the RTC has voided agreements with 11 neighboring property owners and the town to contribute to the cost of the Potomac Crossing sewer system. Had the sewer been built promptly, it could have cost as little as $768,998, to a new owner of Potomac Crossing, the cost could be as high as $3.5 million.

The property is being offered for sale by the RTC at $8 million. It will likely bring less than half that amount, between $3 million and $4 million—on a property that was carrying $16 million in debt when it was taken over.

If, on the other hand, it had been held and managed with an eye toward maximizing the value and utility of the property without taking any risk of development, and if about $1.5 million in engineering fees, review fees and sewer construction had been spent, today the property would reasonably be expected to yield in excess of $22 million.

In general, the RTC acts as best it can given its understanding of its mandate. But Congress must recognize that this mess cannot be brought to an even partially successful conclusion by mandating rapid liquidation. If we continue on the present course, the downward spiral in the value of real estate will accelerate, precipitating the collapse of commercial banks by undermining the value of property held as collateral, and eroding the principal element of every American family's net worth: the equity in their home.

The long-term economic value of real estate is a substantial portion of the nation's net worth, and as long as the RTC is poised to dump properties on the market, nobody knows how much farther prices will fall. If the roughly $300 billion in real estate loans due over the next two years cannot be refinanced at present loan amounts because of a decline of as much as 40% in real estate values, then we are headed for a new problem at least as big as the one we've watched grow for the past two years.

Here's what must be done:

The RTC should abandon the policy of liquidation as soon as possible.

Congress must recognize that as the owner of more than 61,000 parcels of real estate, the government, like it or not, is in the real estate business and must act prudently so as not to destroy the value of real property all across the country.

Private sector individuals and companies with real estate experience must be brought into the process early to aid in the management of real estate assets.

PARTICIPATION BY THE LITTLE GUY

A tax incentive to make it possible for the little guy to participate in the purchase of real estate and other assets from RTC must be enacted. For example, Congress could allow a deduction of $2,500 for investment in a publicly held entity that would buy assets from the RTC, the FDIC, Freddie Mac, Fannie Mae and other federally insured financial institutions.

Bank regulators must be prevented from forcing banks to write down assets that have real long-term value to their artificially low present values.

The FDIC must stop closing banks and thrift institutions where there is no evidence of fraud or self-dealing.

If Congress will not take such steps, there is no doubt in my mind that no one can estimate the ultimate cost facing this nation. The only thing I can say with absolute certainty is that it will far exceed anyone's worst fears.

THE MOUNT VERNON DAY CARE CENTER, INC.: 100 YEARS OF SUCCESS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentlewoman from New York [Mrs. LOWEY] is recognized for 5 minutes.

Mrs. LOWEY of New York. Mr. Speaker, while the need for quality day care centers has been a major national issue in recent years, it has long been a priority for the people of Mount Vernon, NY. For 100 years, working parents in that city have been able to rely on the quality service of the Mount Vernon Day Care Center, Inc.

In 1891, the Bureau of Charities of the city of Mount Vernon, recognizing that many working parents needed a place for their children to be cared for while they worked, founded an institution that would help respond to this important need. The name has changed several times throughout the years, from The People's Institute, to the Family Service Association, to the Mount Vernon Day Care Center of today. Its mission has changed as well, from simply providing custodial care to seeking to provide an educational experience for young children at the same time as providing care. But the animating spirit of this fine organization has always been the same: A sense that meeting the needs of the families and children of Mount Vernon is of preeminent importance.

In recent years, the center has expanded its operations tremendously. In 1972, with assistance from the New York State Housing and Finance Agency, it moved into the building which it occupies today. In 1985, the center entered into an agreement with the Westchester Community Opportunity Program to provide two Head Start classrooms. And just last year an ambitious program of building improvements was undertaken. In the world of the 1990's, there is more need for quality child care than ever before, and this center is still doing everything that it possibly can to respond to that need.

Among those responsible for that achievement are center president Walter Royster, executive director Linda Iglehart, 1st vice president Monica Watson, 2d vice president James Simmons, recording secretary Ruth Wormsley, corresponding secretary Sheila Baptista, and treasurer James Dickerson. It is, in large part, their leadership and dedication that keep this institution viable. For that, we all owe them a debt of gratitude.

This weekend the center will celebrate its 100th anniversary. During this celebration, two very special people who have contributed to its growth will be honored. One is the former president of the center, Dr. Betty Shabazz. The widow of Malcolm X, Betty is the mother of six daughters and serves as the director of communications and public relations for Medgar Evers College of the City University of New York. She is a former president of the day care center's board of directors, and her work for the center has been impressive. Also being honored is the center's executive director, Linda Jones Iglehart. She is a former teacher of early childhood programs whose dedication to the children of Mount Vernon is unmatched, and whose tenure as executive director has been noteworthy for its success.

It is a privilege to join many others in congratulating Dr. Shabazz and Ms. Iglehart. They are worthy recipients of the awards that they are receiving, just as the Mount Vernon Day Care Center is a worthy recipient of the effort and the love which they and many others have given over the years. For any institution to survive for 100 years is a great accomplishment, Mr. Speaker. Even more remarkable is survival enhanced by growth and service. That is the nature of the Mount Vernon Day Care Center's survival. On behalf of all my colleagues, and the countless children whose childhoods are brightened by the service of this fine institution, I offer my sincere congratulations to all of the friends and staff of the Mount Vernon Day Care Center, Inc., as they begin a second century of service.

DEBATE TIME ON THE BAILOUT BILL THAT JUST FAILED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 60 minutes.

Mr. OWENS of New York. Mr. Speaker, I am going to take only a small portion of my 60 minutes to speak on a very relevant subject. I want to speak on the $70 billion bailout bill that just failed.

Mr. Speaker, we did not pass that bill. There was a vote of 324 against the bill; only 89 voted for it.

I call it a $70 billion bailout bill, and one of the reasons I voted against it is because nobody during the debate wanted to discuss the dollar value of the bill. That was the least discussed part of the bill. There are many reasons why other people voted against it. I will not pretend that all of those who voted no, voted for the same reason. This bill was voted down by a revolt of the independents for many reasons. There were many reasons why people chose not to vote for a bill that was a steamroller. It trampled on the people in many ways. It trampled on good ideas. It trampled on common sense, and, even in its procedure, it trampled on common sense and trampled on the dignity of the Members of the House.

One of the reasons, one of the major reasons, that I voted no, that I opposed the bill, is that the steamroller approach of the bill in general was added to the rule and the procedure. A $70 billion bill, and not every Member of the House had an opportunity to even make a statement of 1 minute. They cannot even make a 1-minute statement. Seventy billion dollars.

Mr. Speaker, I think this is a major responsibility. I think it is just as important as Desert Storm. I want to applaud the leadership of the House at the time that Desert Storm was being debated. Every Member of the House was given an opportunity, if they wanted it, to speak for 5 minutes. That made a lot of sense. It was a life-and-death issue. It was not $70 billion.

We did not admit it was $70 billion. It was only a $30 billion bill, but it is going up every day, but nevertheless please recognize that every Member of the House, all 435 of us, ought to have the right to let our constituents know and to go on record for history as to where we stood on such an important issue was there.

I wrote a letter to the Speaker at the beginning of this process for this bill asking that the rule do the same thing as it did, the leadership, take the same steps that it took in the case of Desert Storm. It was not really written into the rule when we debated Desert Storm. The leadership made arrangements because of the urgency of the matter and the importance of it. I asked that they do the same thing. I wrote a letter to the Speaker saying that every Member who wanted to speak should be given 5 minutes to speak on this $70 billion bailout of the commercial banks bill. I sent copies of the letter, of course, to all of the leadership of the House. I have not received a single response or comment from any of the leadership.

Mr. Speaker, this is not the first time that I have shown this concern. During the consideration of new rules for the House last fall I proposed a rules change. That rules change simply said that on any matter every Member of the House should be given a 1-minute privilege, or 10 1-minute privileges per year, that on any matter that they considered important they could use their 1-minute privilege 10 times per year and make a comment of 1 minute on that important bill. The Committee on Rules found that too dangerous. I mean the Democratic Caucus of the Committee on Rules found it too dangerous, and it did not go very far. I think it was too conservative, that 1 minute is not enough, and I am going the change that request to 5 minutes and offer it again as a rules change.

Mr. Speaker, this is just one example of how important it is. I mean stop and consider the fact that each one of the 435 Members of the House serve a district approximately the same size, that every one of our constituents deserves the same kind of representation. The more important a bill is when it comes to the floor, the more restrictive the rule is.

I say to my colleagues, "If you want to study that, ask CRS to research it. Go ahead and do it. I'll tell you from my 9 years of experience here that I've noted the more important a bill is, the more likely it is to be restricted to the least amount of debate."

We spend less time on the House floor per minute debating than the Senate does. The Senate has a hundred Members. They spend far more time on most legislation than we spend.

I think that the Committee on Rules is a wonderful invention. I think that the Committee on Rules is important to control the flow of legislation. I

think it is a good procedure. But I think that it has been abused, and we have gotten into a tradition of abusing it to the point where the House leadership and each Member of the House cannot really justify to their constituency or the American people in general why we spent so little time discussing a $70 billion bill.

How much time did we allot for this bill? There were 3 hours and 45 minutes of general debate allotted to this bill, H.R. 6. There were 6 hours and 10 minutes of debate on the proposed amendments. Add the general debate time and the time for the amendments and we have 9 hours and 55 minutes to the bill which is making a $70 billion commitment.

Now, if there are people out there who followed the debate, they will say, "Where did you get $70 billion from?" They did not hear anybody discuss that.

□ 2000

I want to congratulate the majority leader who made the final speech. When he made the speech he at least acknowledged it was a $70 billion responsibility that was being undertaken by the Government in the bill. Five billion dollars has already been allotted to the FDIC. The commercial banks, and we are not talking about the S&L's, that is a whole other chapter, where later on this year between now and Christmas the stampede will be on to get more money to bailout the S&Ls, but this is the bailout of the commercial banks.

They got $5 billion already. They have another $30 billion that is immediately obligated in this bill. They are going to be obligated an additional amount to make the total obligation and responsibility to the American taxpayer $70 billion.

Seventy billion dollars is contained in this bill. By the title of it you would not know that that is what it primarily is about.

The total debate time was about 10 hours, or 595 minutes, if you want to be exact. The 9 hours, 55 minutes comes out to 595 minutes.

In 10 hours of debate time, this body considered $70 billion. That comes out to 1 hour of consideration per $7 billion, or 1 minute of consideration for $116 million, or for every second we are considering $1.9 million. If that does not sound like a lot of money to you, just stop and think. The responsibility of casting a vote on a $70 billion obligation rests with 435 Members, and yet if this Member representing the 12th Congressional District had asked for time to speak, I might have been given 30 seconds, or I might have been given time to quickly blurt out a unanimous-consent request. That is all I could hope for.

In 10 hours of debate you can only accommodate the members of the committee. You cannot accommodate many people. There is no use trying to squeeze the situation so that everybody only has a time to gasp.

Why are we in a such a hurry? Is the amount of time spent debating billions on the floor of the House so humongous that we have to rush through a $70 billion bill?

I have not done any research yet. I do not know exactly how much time we spent this year debating bills, but I would say from instinct, from feeling, we have spent relatively little time on the floor of the House debating important bills, or debating bills at all.

If you add it all up, we spend relatively little time. If you compare the House of Representatives with 435 Members to the Senate with 100 Members, you will find the Senate spent far more time on the floor debating bills in general, and per Member they are way ahead of us.

So I am not asking for anything unreasonable when I say on an important bill like this we should have had at least 5 minutes. One reason to vote against it is that the procedure was steamrolled and kind of ridiculous to have us go back to our constituencies and say "I voted on a bill involving an obligation of the American Government, the taxpayers, for $70 billion. But, I am sorry, I didn't have a chance to get one word in on the debate."

Seventy billion dollars would buy a lot of schools. It would buy a lot of teachers' salaries. Seventy billion dollars would pay for a lot of health care. I need not go on and on.

Seventy billion dollars is a lot of money. It is our obligation, it seems to me, to guarantee there is maximum discussion and maximum debate.

There has been a lot of discussion about the perks of the House and infantile complaints have arisen and the American people have been made to get excited about a lot of nonsense related to haircuts and traffic tickets and ridiculous things like that, things that can only be dreamed up by infantile freshmen who really do not know what is important.

There are a lot of very important changes that ought to be made in the way this House is governed. One important change is we ought to certainly guarantee that there is a reasonable time to debate every matter that needs to be debated.

The way things stand up, in the consideration of this $70 billion bill, which every Member of the House, if you divided the $70 billion by 435, you find each Member of the House is responsible for $161 million of that $70 billion, if we assume that responsibility that way, then each Member's theoretical 1½ minutes of debate time would have been worth $161 million of influence on that $70 billion tab.

It is ridiculous, again, that so little time was afforded to this very important bill. So that is a very good reason that some of these independent ants revolted and voted against the bill. Just procedurewise it is a ridiculous situation.

We spend a lot of time on ridiculous situations here. We get very passionate and very excited about pennies, while we spend billions and never stop really to even talk about it to any great extent on the floor of the House, $70 billion obligations like this to bailout the commercial banks.

We do not even use the term "bailout." We obfuscate an obligation of $70 billion in all kinds of language.

We vote $28 billion more for intelligence services, the CIA, and other intelligence gathering activities. What are they gathering intelligence activities for now? Why do they need $28 billion to gather intelligence when the cold war is over and the Russians are ready to sell us their secrets?

There was an article in the New York Times this morning about the Russians are working hard to sell their secrets about space technology to anybody who wants to buy it. Our Government is ready to spend billions of dollars on research for our space program for the future when they can spend a few million dollars and buy a little gadget, engines, metallurgy secrets, a number of things available. You just go over there and outbid the competition, and, instead of having to spend billions of dollars in future research, buy it from the Soviets.

Why do we need the CIA to protect our secrets or to get somebody else's secrets to the tune of $28 billion? It is one of those absurd things that did not get discussed very much when it was on the floor.

Why do we need them? The CIA could not even estimate properly the collapse of the Soviet economy. We were spending billions of dollars there. They could not see the collapse of a giant, gigantic, monstrous dinosaur economy. It all happened by accident to them. We were all shocked.

The CIA told us very differently about the state of the Soviet economy and their strength for the future. So why spend $28 billion?

Why continue to spend more than $100 billion to defend Germany and Japan? There are expenditures which are outrageous which are never discussed around here, but people want to get excited about checks that bounce at the House Bank that do not cost the American taxpayers 1 penny. They want to get excited about haircuts, they want to get excited about traffic tickets.

If you want to move the capital to New York, we will give you all the traffic tickets without having to run down to have them fixed. That is a courtesy we will give to the U.S. Government representatives, as we give it now to people from all over the world. The

U.N. people do not have to worry about getting tickets. They do not get them in the first place. They do not have to be fixed. Why do they keep giving us tickets?

So it is ridiculous to have all these minutiae, trivia, thrown at the American people, while billions of dollars are being wasted and there is no discussion.

There is another reason I voted against this bill, and that is the whole situation, the steamroller emergency that has been created by the banking industry.

First we had the S&L emergency. The S&L emergency was dumped in our lap, and we were told to save the American economy you have to give us the bailout money.

One hundred fifty-seven billion dollars we voted on the first go-around, the first and second go-arounds, to bail out the savings and loan associations. That action was supposed to save the American economy.

What has it done? The American economy has gone tumbling downhill since the bailout of the S&L's began. All we have done is created an RTC, a whole new industry, where the American taxpayers are paying money into a fund which is going into the bailout or the replacement of money that was stolen by the bankers and their cronies and their friends and their employees. The whole industry has been created so that Texas, the State which had the largest number of savings and loan associations to fail, Texas is the major beneficiary of the RTC industry. They have a whole industry, jobs and all kinds of benefits flowing from the bailout that is necessary because of the way Texas handled their financial institutions.

So that steamroller approach that was taken with the savings and loans was a fraud. We did not save the economy. Things kept going downhill, and now the commercial banks, for the same reasons as the savings and loans were failing, the commercial banks are failing. They do not admit they are failing.

William Seidman, who recently retired, was telling lies right up to the last day he left. William Seidman was a champion liar among official liars.

□ 2010

They lied about it up until the point where it was down to zero. Finally the fund was down to zero. They had to have a $5 billion loan from the U.S. Treasury. They do not call that a bailout. It is a loan. And on top of that, I just told my colleagues $30 billion is waiting immediately and another $40 billion bring the total to $70 billion, not a bailout, a loan.

Well, every year that banks continue failing means that we are further and further away from the loan ever being repaid. So it is the same as an appropriation for a bailout, just different language. It applies the same pressure to the American economy because the Treasury has to go out and borrow the money. It has an impact on the total finances of the Nation, total economy of the Nation. It is the same thing, but never mind the semantics of it. It is a $70 billion rescue that we are now being steamrolled into.

And we are told, "You've got to do it." The blackmail situation that existed in the S&L phenomenon, it was blackmail. Here we are, the savings and loan associations, We have Federal Deposit guarantees. We have squandered the money away with parties, and we have given our friends big loans without proper collateral. We have paid ourselves giant salaries. We have paid our employees tremendous commissions for making loans that have now gone bad. We have nothing to show for what we have done. Here we are. But you guaranteed the deposits and now you have to make good.

It is blackmail. "Come and give us the money to bail out." We had no choice. Now we are faced with a second blackmail situation. Here you are, American taxpayer. You guaranteed the deposits. You didn't set anything in motion on the management of the deposit. All you had was a few weak regulators out there, regulators who have giant conflicts of interest, regulators who were frightened of the political powers that told them this is the age of deregulation. You do what you are told to do or you don't last very long.

So we are all caught in the blackmail situation. Again, we guarantee the deposits. We have to come through with the $70 billion.

No matter how much we protest, we know that we have to come through with the $70 billion. The question is, if we must come to the rescue of the commercial banks, if we must do our duty, if we must bail them out to the tune of $70 billion, at least we ought to get a tradeoff, at least there should be some consideration of some real reforms. Who else would ask for $70 billion and expect to give nothing? The American banking industry wants to give nothing in return for demanding $70 billion.

We had some very reasonable proposals in this bill that were voted down. First of all, the too-big-to-fail doctrine has not been confronted in this bill. Without taking too much time, I just have to say the too-big-to-fail doctrine is just that. It is a doctrine that was concocted by the people who more and more have the power in our Government, term limitations, a lot of infantile people are jumping up and down about term limitations. They think that they will accomplish something by having term limitations on elected officials. But there are not term limitations on regulators. There are no term limitations being proposed for bureaucrats. There are no term limitations being proposed for the staff of the House of Representatives or the Senate.

People on staff, some have been here 30, 40 years. They do not speak to freshmen. A Member has to be here 5 or 6 years before they have any respect for that Member as a Congressman. Staff people, before we deal with reform in government by imposing term limitations on elected representatives, we ought to take a hard look at who really runs the Government.

William Seidman, the head of the FDIC, was never elected by anybody. Seidman and his predecessor established a doctrine without having any authority in law. Nobody has ever shown me the authority that allows Seidman and the FDIC people to say that there are some banks in this Nation that are too big to fail and, therefore, the Federal Deposit guarantees, which are limited in law to $100,000 per account, have to be extended to persons who have more than $100,000, to foreign governments or foreign investors or all the deposits.

The Bank of New England, everybody who had a dime in there above $100,000 need not worry. If one had $1 billion in the Bank of New England, an Arab sheikh, and you had put that much money in there, by doctrine, by proclamation, William Seidman and the FDIC Board said, "We are going to guarantee it. You are too big to fail. The American taxpayers are going to be very generous to you."

Where was the authority? They had no authority to do it. Why are they not challenged by the executive branch of Government? Because their friend's accounts are in there. Their constituents have accounts in there. Why are they not challenged by the Democratic leadership of the House and Senate? I do not know. They must have friends there also.

Billions of dollars are flowing into the pockets of people who had no guarantees in law. You, as the American taxpayers and voters, never said you would guarantee deposits of above $100,000 per account. Yet billions of dollars are guaranteed because certain banks are considered too big to fail.

Little banks like the Freedom National Bank in New York, a tiny little bank, a tiny bank, did not reach $1 billion in assets. When they had trouble they swooped down on them and closed them and they took the money away from them. Even charitable institutions, groups that had social work projects, projects to feed the homeless, Meals on Wheels for the aged, if they had more than $100,000, they took it. Some groups lost $500,000. That $500,000 lost by one agency was $500,000 lost by the taxpayers because that agency did not have a single dime in the bank that was private money. it was grants from the States or grants from the city or grants from the Federal Government.

The FDIC took the money. That means they took the taxpayers' money away above the $100,000 limit.

When they were confronted by the legislators, they felt guilty about that one. They decided to give half the money back, again by doctrine, half, but these little agencies are still waiting for the other half of the Government's money, the people's money that they just were entrusted with. It was one of the many kinds of absurdities.

They were so little that they could be trampled under and yet the Bank of New England, the Continental Bank of Illinois, on it goes, they are too big to fail. That doctrine was not challenged in this legislation.

There is some language about phasing it out, which does not confront the situation that is happening right now, and that is that every time a commercial bank fails, they are bleeding the American people, the taxpayers, dry.

The amendment by the gentleman from Ohio [Mr. WYLIE] and the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Wisconsin [Mr. KLECZKA] to limit taxpayer exposure to $100,000 per bank so that no person could recieve more than $100,000 per bank in insurance, that amendment went down to defeat. That was a reasonable proposal. Yet the banks did not want to compromise. The powers that be wanted to steamroll right over that one.

The gentleman from New York [Mr. SCHUMER] offered an amendment for core deposits to protect the deposits of all those depositors whose accounts were guaranteed up to $100,000 from investments that were risky. What could be more reasonable than to protect the deposits guaranteed by the American taxpayers from risky investments? That went down to defeat.

Other reasonable compromises were turned down. The amendment of the gentleman from Massachusetts [Mr. KENNEDY], which is an amendment which called for greater enforcement of the Community Reinvestment Act. The Community Reinvestment Act is a unique American approach that requires that banks act responsibly in their lending policies and lend to communities that normally do not attract investments, that banks recognize that they are in partnership with the people.

American banks are unique. Some of them complain about the Community Reinvestment Act. There is nothing like that imposed on Japanese banks, nothing like that imposed on the banks of West Germany. Of course, there is not. But the banks in West Germany do not receive a single penny in guarantees from the people. Deposits are not guaranteed in West Germany. Nothing is allocated by the Government to cover the deposits that are in banks.

They have insurance that they work out themselves privately, but they do not have any Government guarantees, no taxpayer guarantees. In Japan they have limited guarantees up to an amount, I think of like $14,000.

In England they have very limited guarantees, a certain small percentage of the total amount deposited. Nobody has guarantees which, again, reach $100,000 per depositor or all of the other accouterments and frills that allow people in banks too big to fail to have an unlimited amount of guarantees.

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So the banks in America, U.S. banks, have a special subsidy. They have a very special relationship with the people. They are in partnership with the people. If a bank decided it wanted to be strictly capitalistic, strictly private, give up its deposits, its guaranteed deposits, it will go out of business in a few months because very few people are going to deposit in a bank that does not have a guaranteed Federal deposit if there are other banks that do have it.

So their business is dependent on the American people. It is in partnership with the American people. Therefore, it is not unreasonable to ask them to assume certain responsibilities. Let us have a partnership. We recognize that we have been blackmailed. We are going to have to pay the $70 billion. In exchange for the $70 billion, at least give us what the Kennedy amendment asks. It does not ask for very much. The Kennedy amendment calls for simple matters like steps to improve enforcement of the law without burdening law-abiding lenders. It would require the large banks seeking interstate powers to have a satisfactory community lending record. It would make specific commitments to maintain and approve that record. The bank must make specific commitments.

Also it would require the establishing of prompt corrective action procedures to enforce the laws when they were violated. It would require the use of lending data when assembling the bank's lending record. It would require the establishment of fair lending procedure and testing procedure for that fair lending procedure. It was all very simple no-cost-to-the-Government and no-cost-to-the-banks steps that would put teeth in the Community Reinvestment Act, which has existed for more than 25 years, and the banks treat it as a joke. The Community Reinvestment Act, CRA, that is a big joke. That is something we have to do paperwork for but we never do anything in substance for.

Fulfilling their public obligation, recognizing that they are in partnership with the very people they are being asked to help, would have been a reasonable action by the banks and the banking interests that defeated the Kennedy amendment. CRA is now a joke. As I close, I want to emphasize that here is an area where, if we are going to have new action by the House, and we are going to have to have it, here is an area where I beg of the banks, the financial community, to act responsibly and recognize their obligation to give something back to the taxpayers who operate in partnership with them by guaranteeing their deposits. Unlike foreign banks, they have guaranteed deposits, so we would like them to guarantee a real benefit flows back to the community through the Community Reinvestment Act.

I have a proposal specifically which I would like to submit for the RECORD being offered to the New York State community reinvestment fund, calling for the creation of a $1 billion New York community reinvestment fund. New York State banks are worth more than $130 billion, their assets altogether, so it is no problem for them to create a $1 billion community reinvestment fund. I did not say $1 billion per year. The fund would turn over. The fund would be a lending fund. The fund is not giving away anything to anybody.

Mr. Speaker, I include for the RECORD a proposal for the establishment of a billion dollar New York State Community Reinvestment Fund, as follows:

PROPOSAL FOR THE ESTABLISHMENT OF A BILLION DOLLAR NEW YORK STATE COMMUNITY REINVESTMENT FUND OFFERED BY CONGRESSMAN MAJOR R. OWENS

INTRODUCTION AND BASIC ASSUMPTIONS

The Savings and Loan debate is now a fact of American life with devastating consequences for the economy. There is no way to avoid widespread damage. It is possible, however, to accentuate the positive and put forward a new initiative from the American financial community: Let's set an example for the rest of the nation. The Governor should undertake this task using his influence to encourage the banking community to take a high road moral leadership response, no legislation or executive order should be needed.

The voters and the general public are becoming more and more aware of the unique status of the banking business in the U.S. Taxpayer guaranteed federal deposit insurance places this industry in a partnership position with the public. Any bank which loses its government deposit insurance guarantees will be immediately placed at a competitive disadvantage and will not be likely to survive. A full undertaking of this public partnership situation will generate even more public scrutiny and voter dissatisfaction.

In the global market-place there are no government deposit insurance guarantees nearly as generous as those provided by the U.S. taxpayers. West Germany has no government deposit insurance for banks.

The wimpish enforcement of the Community Reinvestment (CRA) Act which requires banks to invest in the communities where they are located has made CRA a bit of a joke. This same CRA, however, can serve as a kingpin in the protection of the banking industry from the wrath of the American Taxpayers. In New York State, since its inception not very much has been invested in the CRA by any of the institutions covered by the law.

One problem has been the micro-investment approach and the Balkanization of the

definition of "community". It would be more useful and relevent to define New York State and or New York City or Buffalo as "Communities" instead of limiting the concept to a neighborhood served by a local bank branch.

People in New York City, for example, clearly do not necessarily bank where they live. They are more likely to have banking accounts in the area near their work-place. The wealth collectively accumulated by the banks of New York City is derived from the dynamics of the total City economy and thus the City as a whole should be treated as the "Community" for the purposes of the Community Reinvestment Act.

Accepting a "Macro" approach to CRA instead of the traditional and obsolete "Micro" approach means that all banks have a responsibility for all of the neighborhoods of the City. The few smaller banks which have been left with branches in the poverty areas should not have the full responsibility for CRA dumped on them. An approach which establishes a state wide and/or citywide community reinvestment fund would be a far more workable approach. Only a Governor Cuomo or a Mayor Dinkins or a Felix Rohaytyn or all three together could provide the kind of leadership necessary to launch such a fund.

BASIC FEATURES OF FUND

Call upon all the banks in New York State whose deposits are guaranteed by Federal insurance to participate in the establishment of a Billion Dollar Community Reinvestment Fund. Each could contribute a percentage consistent with their total assets.

Funds would be allocated to the designated Poverty areas of the state in accordance with their percentage of the state's poor population.

In addition to the start up amount one tenth of the fund (100 Million dollars) would be added each year.

The fund would be authorized to annually expend one tenth of its resources for grants to CBO's for children's recreation/remediation programs to facilitate the establishment of at least one such recreation/remediation program within walking distance for every school age child. (This means the number of Elementary Schools in each designated poverty area.)

The fund would be authorized to annually utilize a second tenth of its capital for loans to small businesses located in poverty areas and owned by residents of such areas or by persons affiliated with organizations bases in such areas. The interest rate should be no more than one half of the prevailing prime rate.

The fund would be authorized to utilize the remainder of its capital for mortgages on low and moderate income rental housing units sponsored by individual developers affilatied with community based organizations or such organizations themselves. Mortgage interest rates should be no more than is necessary to cover administrative and processing costs. Developers would be required to rent units at a cost to the tenants of no more than 25% above the maximum rates charged by the New York City Housing Authority. Ten year options to purchase their apartments should be offered to tenants.

AMPLIFICATION OF PLAN FOR MORTGAGE FOR LOW AND MODERATE INCOME RENTAL HOUSING

The Billion Dollar Community Reinvestment Fund must be more flexible than similar government programs. While maintaining sound processes and procedures, it must recognize its unique mission: to provide needed housing through local ownership and development. Greater risks must be taken and the traditional rules must be adjusted.

Community roots must always be a priority consideration in granting mortgages. Since churches are the most stable, long term institutions within the poverty areas, churches must be aggressively encouraged to participate in housing development.

Joint ventures which utilize other government and private funds must be encouraged. Membership in citywide associations and consortiums for training, technical assistance, accounting, etc. must be required.

For each poverty area two or three entities should be designated to administer the fund utilizing local banks and private consultants as needed.

AMPLIFICATION OF PLAN FOR POVERTY AREA SMALL BUSINESS LOANS

Flexibility and risk taking must be the rule if the Billion Dollar Community Reinvestment Fund is to make a significant impact. SBA and a few other programs with rigid loan and credit rules should not be imitated.

Community roots should be the priority consideration when bending the rules. Such "roots" must translate into support for the local business person. The Church or the Lodge should be willing to invest also or sign Contracts for Business, etc.

"Necessity" services and retailers should be given priority in the allocation of loans. While no ventures should be automatically ruled out, those related to food, clothing, shelter, transportation, child care, etc. should be favored.

Persons who are members of group efforts and consortiums which provide necessary technical assistance, bulk purchasing, advertising, etc. should receive priority consideration.

AMPLIFICATION OF PLAN FOR GRANTS TO CHILDREN'S RECREATION/REMEDIATION PROGRAMS

Diverse grants which are not loans or investment are needed to stimulate changes in the non-physical environment of the poverty areas. Although government is better prepared for this task than the private sector, the Billion Dollar Community Reinvestment Fund can be an important source of "core" funding which guarantees the life of struggling Community based organizations. Crime prevention activities and education remediation are the highest program priorities for these communities. Both targets involve intense work with youth.

To avoid the obviously reoccurring problems of financial and administrative difficulties, "Prime Contracts" with large Community Based organizations should be utilized. Such entities would then "sub-Contract" to groups which are even closer to the target populations. The "prime contractors" would guarantee that taxes are paid and appropriate records are kept since the "prime contractors" with a critical mass of funding would be able to hire the quantity and quality of final personnel necessary.

Small Community based organizations have generally demonstrated their effectiveness in recruiting those in greatest need and in providing sound and continuing program activities. If they are kept free of fiscal record keeping responsibilities they will probably perform even better.

SPECIAL PROPOSAL FOR CHURCHES TO UTILIZE THE BILLION DOLLAR COMMUNITY REINVESTMENT FUND TO EARN PROFITS FROM THE NYC TOURISM INDUSTRY

The one NYC industry that is presently growing and destined to grow even more in the future is the New York Tourism Industry. Although the City has been given a bad image within the boundaries of the nation, foreigners still want very much to see New York and they have been greatly encouraged by the drop in the value of the dollar which makes their money worth more in our economy. At this very moment foreigners are filling the hotels in New York City.

There are also many Americans who still want to see New York at sometime before they die. Certainly there are a large number of African Americans who would visit the city if the hotel costs were not so high. There are also many persons and delegations in the Eastern European countries and in third world countries who would like to visit New York but find the cost of lodging too high. Many church groups refuse to come to New York for this same reason.

The proposition offered here is the following:

Churches should become sponsors for low cost lodging for visiting groups and families. After facilitating the construction of such facilities church representatives would work to guarantee that they are always full.

The Help I family housing for the homeless which was pioneered by Andrew Cuomo could serve as a model for such low-cost tourist lodging.

People traveling in groups and delegations do not mind sharing bathrooms and kitchens.

The economy of the city would greatly benefit by bringing in tourists who are not members of that jet-set or business class able to pay high costs for hotels. These family and group tourists would spend a greater share of their funds in shops, restaurants and entertainment establishments. The City government should therefore participate in the development of such "Church Tourist Centers."

Each church sponsor would have the right to reserve its facility for its own activities when needed: choir festivals, conventions, convocations, etc.

To guarantee ongoing professional Management churches could contract for experienced expert services.

If ten churches bought ten facilities online at the same time, obvious economies could be realized in both construction and operations.

Some churches may experiment by using their facilities to house the homeless during the coldest period of the year (December to March) and then return to tourist accommodations for the remainder of the year. The City would pay at the same rate as private groups.

Numerous jobs as service people would be generated within the "Church Tourist Center." Surrounding areas would also benefit since restaurants and shops would be patronized extensively.

The capital needed to build a "Church Tourist Center" would be considerable. Only a source like the Billion Dollar Reinvestment Fund could provide the financing for a series of such projects.

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The $1 billion Community Reinvestment Fund has several parts. I will include them in their entirety in the RECORD, but I would like to conclude by saying, let us be reasonable in the structuring of a new bill. Let us be reasonable in meeting the responsibilities and obligations of the financial community, the banking community, to the American people. Let us add and

include these reasonable amendments. Let us be reasonable in the establishment of a procedure which recognizes the dignity and the responsibility of every House Member.

If we are going to be responsible for an obligation of $70 billion, we would like to have some time to state our position on the floor. The Democratic leadership, it seems to me, can do no less. If we want to prove this body, let us do something significant which will certainly move the body's image forward, and not worry so much about trivial reforms which are being promoted by trivial people.

I hope that when the new bill returns every Member would at least have 5 minutes to state his opinions, if they want to state them, on a bill which obligates the American taxpayers for $70 billion.

FARM CREDIT SYSTEM

The SPEAKER pro tempore. Under a previous rule of the House, the gentleman from Mississippi [Mr. ESPY] is recognized for 60 minutes.

Mr. ESPY. Mr. Speaker, I take this time tonight, along with colleagues from Mississippi, Alabama, and perhaps Louisiana, to discuss a situation that affects farmer borrowers and rancher borrowers in our three affected States, Mississippi, Louisiana, and Alabama, who, if a certain bill which will be considered tomorrow under suspension passes, will be asked and indeed forced to merge their interests and their capital that they have accumulated in a bank called Federal Intermediate Credit Bank with another unspecified bank.

Now, this special order will get sort of technical, I suppose. It is full of acronyms. I suppose generally it can be reduced to one catch word or one slogan. It is called "heck, no, we won't go." These rancher borrowers and these farmer borrowers in these three affected States do not want to merge with this one unspecified institution. They have litigated this issue, they have won, and they do not want to be forced to merge and lose their property without due process of law.

This bank that we will discuss tonight is a sound bank. It is secure. It is under no threat of liquidation or loss of funds. So with my colleagues tonight I would like to discuss the genesis of this issue, the history of this bank, and if I can, Mr. Speaker, not take the entire hour but to use some of my time to insert into the RECORD a compromise position that this Member, as a member of the subcommittee, as a member of the full committee, and as an interested Member who has the interests of his constituents in mind, has submitted to the two sides in hopes that we can get some action on it.

What is the problem? The problem, Mr. Speaker, is that in the 1980's we saw widespread misuse of a farm credit system. Farmers and ranchers were encouraged to buy more land, plant more acreage, and buy bigger and better equipment and to pay off their loans by borrowing more and more money. It resulted in a farm crisis that we continue to battle today.

In an effort to curb these unsound financial practices the Congress in 1987 passed something that we call The Agriculture Credit Act of 1987. The emphasis of this bill was to reduce the overhead cost and to strengthen the long-term financial viability of the farm credit system by consolidating the Federal intermediate credit banks and the Federal land banks in each district.

There is a section called section 14 of the same Agriculture Credit Act of 1987 which mandated the merger of the Federal intermediate credit bank and the Federal land bank in each of the 12 farm credit districts throughout the United States. The mergers were to take place within 6 months after the enactment of the law which was enacted on July 6, 1988.

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The banks created by this same section 410, these mergers once merged, are to be called farm credit banks, and they are to handle both short-term and long-term lending to farmers and ranchers within this entire Farm Credit System.

The 1987 act did not include the mandated consolidation of the 12 farm credit districts called for in the earlier House version of the legislation. However, the act does provide a framework by which interdistrict mergers should occur.

Mr. Speaker, the whole issue is involved with one of local control. The entire issue involves one of consolidation which was a very contentious matter during the 1987 congressional debate, and the Congress, to its credit, reached a middle-ground position. I think that what we crafted was finely crafted and a delicate compromise.

In 11 of the 12 farm credit districts, the merger creation of these farm credit banks under this same section 410 took place, and these mergers in these 11 FCB's took place on schedule. However, the Farm Credit Administration failed to charter a farm credit bank in the Jackson district, and the Jackson district involves the territories, the States of Alabama, Louisiana, and Mississippi, and it failed to charter a Jackson district FCB, because the Farm Credit Assistance Board had decided to place this same Jackson Federal Land Bank into receivership.

Well, we were not exactly sure what happened, Mr. Speaker, so certain Members from these affected States in Alabama, Mississippi, and Louisiana asked that the GAO, the General Accounting Office, take a look at this and tell us what happened. A report was returned after a lot of study which basically said that the decision of this Farm Credit Assistance Board was based on "unsupported or inappropriate economic assumptions." So the result of this decision, and by this Member's opinion, a premature decision, caused an anomaly that has resulted in a situation that we are discussing tonight and which has yet to be resolved.

The Jackson Federal Intermediate Credit Bank, the FICB, nevertheless, tried to remedy this situation during 1988 and 1989 by looking for a farm credit bank to be a voluntary merger partner. Meanwhile, early in 1989, the Farm Credit Administration approved a sale of a number of long-term loans in the Jackson FICB in receivership to the Texas Farm Credit Bank at the same time amending the Texas bank's charter to permit it to make new long-term loans in the Jackson district. In issuing that charter extension, the Farm Credit Administration split the long-term and short-term lending authority in the farm credit district between banks based in different districts.

Then in the spring of 1989, the same Farm Credit Administration interrupted the Jackson FICB. It interrupted their voluntary merger process and instructed it to merge with the Texas Farm Credit Bank under this same section 410 of the 1987 act using the legal theory that the Texas bank was a functional equivalent of a Federal land bank in the Jackson district. Well, these folks from FICB objected, and they went to court, and they successfully appealed this Farm Credit Administration's edict to the courts.

In February 1991, the U.S. Court of Appeals for the Fourth Circuit ruled definitively, Mr. Speaker, that section 410 of the 1987 act did not give the Farm Credit Administration the authority to force this merger, to force this consolidation of the two separate farm credit districts.

So that, in effect, leads us to this point, leads us to this certain matter of controversy which I believe should not be brought up under a suspension theory. In an effort to correct what is an admitted anomaly, an aberration, the House Committee on Agriculture, of which I am a proud member, has included in H.R. 3289, which we will consider tomorrow on suspension of the rules, a section of language which, again, mandates the merger of this remaining Federal Intermediate Credit Bank.

The staff explanation of this section 401, as drafted, is that this section 410 is intended to complete the merger of all FICB's and FLB's into FCB's mandated under section 410 of the 1987 act.

But let us be honest, Mr. Speaker, since the Jackson district, again which encompasses territories of Mississippi, Louisiana, and Alabama, since the Jackson district is the only district

currently without a section 410 farm credit bank, it is clear that the H.R. 3298 provision is addressed only and solely to the Jackson situation. Section 401 would accomplish its objective by requiring the Farm Credit Administration within 1 year after enactment to order the merger of the Jackson Federal Intermediate Credit Bank with the Farm Credit Bank located in one of the other 11 farm credit districts, but, again, Mr. Speaker, let us be honest. The clear effect of the bill is to mandate the consolidation of two farm credit districts which in 1987 Congress rejected the idea of this mandatory interdistrict merger and rejected the idea of forced consolidation of districts.

In 1991 the Fourth Circuit Court of Appeals did the same.

So we are overturning decisions reached by the Fourth Circuit Court of Appeals, and we are going back and overturning something that this body did in 1987.

What we need is a meaningful vote. Under H.R. 3298, the farmer borrowers of the two banks named in the Farm Credit Administration's order can have input into the terms of the merger, but if they cannot agree on the terms, then the Farm Credit Administration would design the merger plan as well.

While the staff explanation indicates that the provision for direct farmer borrower input is necessary to the effective and fair completion of this process, a proposition that I endorse and concur with, under the terms of the bill, if the borrowers in the two districts cannot agree on the terms of the merger plan, their input can be ignored completely. So these same farmer borrowers, these same rancher borrowers from Alabama, Mississippi, and Louisiana, these same folks that have labored, borrowing and investing in the Jackson FICB, if they are forced to merge with an unspecified bank, their input can only be as to the terms of the merger, the merger plan, not the merger partner, and if they disagree even with the merger plan, it seems as if they will not have a meaningful vote.

Over the last 2½ years, the farmer borrowers of both the Jackson FICB and the Texas Farm Credit Bank have paid colossal amounts for lawsuits, colossal amounts for lawyers, colossal amounts for lobbyists in an effort to make sure that their rights under the law are secure.

Section 401 of the bill overturns the court of appeals ruling that a forced interdistrict merger is illegal.

For this reason, Mr. Speaker, I do not believe that section 401 upholds the rights of the farmer borrowers of the institutions in the States of Louisiana, Alabama, and Mississippi, and I am not the only Member who tends to hold this position.

Mr. Speaker, I yield to my distinguished colleague, the gentleman from Mississippi [Mr. PARKER].

Mr. PARKER. Mr. Speaker, I thank my friend for yielding.

I also thank my colleague from Mississippi for arranging this special order.

Mr. Speaker, it is with mixed feelings that I rise today to oppose this measure. I believe that it is imperative that we restore the financial stability of the Farm Credit System. Without this body taking preventive steps at this time, the Farm Credit System, which our farmers depend upon, will be in the same situation that savings and loans business, and the banking industry, now find themselves in. However, included in this worthwhile legislation is language that would give the Farm Credit Administration the authority to require a merger for any Federal intermediate credit bank that has not merged with the Federal land bank serving that same district.

As we all know, this provision only applies to the Federal Intermediate Credit Bank in the Fifth Farm Credit District, located in Jackson, MS, my congressional district. We would not be discussing this issue had the FICB of Jackson had a merger partner back in the late 1980's. Their merger partner did not exist because it was placed into receivership and later liquidated. The Farm Credit Bank of Texas subsequently bought most of the assets of the failed Federal land bank—and then sought a merger with the FICB of Jackson. The FICB rejected the proposal over the Farm Credit Administration's directive. The Fourth Circuit Court of Appeals ultimately agreed that the FCA could not force such a merger.

However, now we have come back to address this issue. In the other body, they have refused to attach the Jackson FICB issue to this legislation. I think we should do the same—this legislation is not one on which this issue should be attached.

There have been several proposals offered to resolve the problem of the FICB in Jackson. One proposal would allow the Jackson FICB to continue to exist to provide short-term lending, while also allowing the Farm Credit Bank of Texas to provide the long-term lending. This proposal would maintain the status quo. Since I have not had one case where a farmer came to me saying he could not get financing because of this division, this proposal seems workable. However, I think that any proposal of this type, including the merger that would be mandated by this bill, should be determined by the Jackson FICB stockholders vote.

The action that this bill would attempt to take amounts to nothing less than a shotgun wedding. Although one party is willing, the other is not. Of course, the willing party has a lot more to gain from the merger than the nonwilling party. I do not think that this shotgun marriage should come at the end of this body's gun.

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Mr. Speaker, I thank the gentleman for yielding to me and I appreciate the hard work he has put into this matter for the benefit of our State and the farmers of our State.

Mr. ESPY. Mr. Speaker, I thank the gentleman for participating. I applaud the gentleman for his remarks and associate myself with the things that he said.

The gentleman is vitally interested in this because it is physically located in the gentleman's district.

Also the gentleman said something that I would like to reiterate, and it is that the Members of the other body have also weighed in on this matter, and they have suggested in the other body that they do not consider this particular issue to be germane to the bill that we will be considering in conference. They have indicated that it is their intent not to consider in conference this particular section 410.

Therefore, I would agree with them that perhaps it is germane, but it is not appropriate at this time.

Also the gentleman mentioned the fact that in this particular Member's district, I have researched this issue very thoroughly and I have talked to farmer borrowers and rancher borrowers from both the Texas Federal Land Bank and the Jackson Federal Intermediate Credit Bank, and it must be said here tonight that the borrowers and investors in both institutions report to us that both institutions are sound and that both institutions adequately service their members; so with regard to the Jackson Bank, no one here and no one in this entire discussion has ever suggested that they are in jeopardy, that the members in Alabama, Louisiana, and Mississippi are not being adequately serviced.

Mr. PARKER. Mr. Speaker, will the gentleman yield further?

Mr. ESPY. Yes, I yield to the gentleman from Mississippi.

Mr. PARKER. Mr. Speaker, that point needs to be made very well. The system in Mississippi is extremely sound. Everyone in Mississippi knows that. It is one reason that Texas wants it so badly.

There is one point, and I have tried to remain as civil as I could possibly be about this whole scenario and how things have worked, but it really bothers me a great deal when all of a sudden I get information from Texas saying, "Listen, we charge less interest than they do in Mississippi."

Now, I do not know who they think we are. I do not know if they think we are stupid, or what; but I will tell you this. Whenever you check those records, all of a sudden you find in Texas that they are loaning money on land which is collateralized, and in Mississippi we are loaning money for production. Of course you can loan money cheaper for collateralized prop-

erty. That loan is collateralized. It is a cheaper rate.

So it bothers me a great deal when all of a sudden this information, some of it is not quite up to par, and is brought to us and they say, "We want you to base your decision on that."

Mr. Speaker, I hope we remain civil throughout all this, and I thank the gentleman for yielding to me.

Mr. ESPY. Mr. Speaker, I thank the gentleman for his contribution.

Mr. HARRIS. Mr. Speaker, will the gentleman yield?

Mr. ESPY. Yes, I yield to the distinguished gentleman from the State of Alabama.

Mr. HARRIS. Mr. Speaker, I thank the gentleman for yielding. I certainly want to associate myself with the gentleman's remarks. I know the gentleman has worked very hard on this issue and a lot of us have worked with the gentleman on it. It seems like for at least the last 2 years that we have worked back and forth, hopefully trying to reach some settlement or resolution of the problem.

I know the gentleman feels the same as I do, that certainly we want to see that our farmer borrowers get the best interest rates that they can. That has been the bottom line with me in whatever we do, that it be in the best interests of our farmers.

But you know, one thing, and the gentleman touched on it and I would ask the gentleman, the FICB in Jackson, as I understand it, is one of the strongest banks in the United States; is that correct?

Mr. ESPY. It is my understanding that the Jackson-based FICB is a sound, solid, safe institution.

Mr. HARRIS. I further understand that there is about $80 million in assets that the bank has; is that true?

Mr. ESPY. To this gentleman's understanding, it is somewhere in that neighborhood.

Mr. HARRIS. Having studied the particular legislation before us. H.R. 3298, and of course I share the gentleman's thoughts and certainly oppose this legislation with him, but the vote that the stockholder borrowers are allowed, if I understand the gentleman correctly, is not on the merger itself; is that correct?

Mr. ESPY. It is my understanding under the terms of this particular bill, the Farm Credit Administration has, if you will, the trump card of choosing the merger partner. If the affected stockholder borrowers of this FICB disagree, their disagreement can only go to the terms of the merger agreement, not the identification of the merger partner. Even if they cannot agree on the terms of the agreement, then virtually their objection or their concerns really carry very little weight.

Mr. HARRIS. Mr. Speaker, if the gentleman will yield further, I know that the farmer borrowers that I have talked with in my district, of course they feel like they should have a vote on the merger, that the bylaws provide for a vote and they feel they should have a vote and that it is almost like taking your property without due process. Of course, they have sought due process. They have been through two courts, the Federal district court and the Fourth Circuit Court of Appeals. Of course, they won in the fourth circuit.

So I just want to ask our colleagues to look at this issue very closely. It is something very important to Alabama, Mississippi, and Louisiana. We just feel like our stockholder borrowers are entitled to a vote that counts and not one that is after the fact.

Mr. Speaker, I thank the gentleman for taking this special order tonight. I think it is a critical issue and I think the solution that the gentleman has offered that our good friend, the gentleman from Mississippi [Mr. PARKER] spoke of, certainly would be it sounds to me a good resolution of this problem.

Mr. ESPY. Mr. Speaker, I thank the gentleman for participating.

The gentleman also realizes by his presence and his participation that this is a contentious and a controversial issue. Under the rules of this House, if this body considers something on suspension of the rules, it is likely that the matters considered under that system are not controversial or are not contentious and must require a two-thirds vote of this body.

By our presence and by our discussion here tonight, anyone could deduce that this issue does carry some concern with certain Members in this House, particularly those from our affected States and therefore should not come under the suspension of the rules.

Mr. Speaker, I would like to talk about alternatives and I would like to talk about a compromise.

The borrowers of the Federal Intermediate Credit Bank of Jackson and its associations deserve a resolution that has the benefit of full discussion, the benefit of full consideration, and the benefit of full debate. However, hearings on this issue have never been held and solutions have never been discussed in an appropriate committee hearing or subcommittee hearing.

□ 2050

I believe that the farmer-borrowers of the affected institutions are entitled to a meaningful stockholder vote both on the identity of a merger partner and on the terms of a merger plan. So therefore, Mr. Speaker, as a result, this member has drafted an alternative resolution to section 410. The alternative would more fairly and responsibly apply section 410 of the 1987 act to the Federal Intermediate Credit Bank of Jackson.

In summary, it would apply section 410 to Jackson by chartering the only Jackson district bank still in operation, the Federal Intermediate Credit Bank of Jackson, as the 12th farm credit bank under section 410, the Federal Farm Credit Bank of Jackson. This will establish the last of 12 farm credit banks called for in the 1987 legislation, and it would in effect close the hole now existing from the earlier legislation. It will retain the essential element of Congress' agreement in 1987 that further consolidation of the 12 farm credit districts be done on a strictly consensual basis, only after a binding stockholder vote. The alternative protects the Farm Credit Bank of Texas by limiting the Farm Credit Bank of Jackson to short-term lending authority only.

Let me underscore that, Mr. Speaker, by saying that the Farm Credit Bank of Texas would be protected because the Farm Credit Bank of Jackson could only handle short-term loans. The new farm credit bank could handle short- and intermediate-term lending in the Jackson district, the same sort of authority it has had in the past and continues to have now as an FICB. Conversely, the Farm Credit Bank of Texas would retain its long-term lending authority and be limited to that lending authority in the Jackson district.

Mr. Speaker, I would note that the resulting situation is not without precedent. Currently in the State of New Mexico the Farm Credit Bank of Texas provides short- and intermediate-term lending services, and the Wichita Farm Credit Bank provides the long-term lending.

Additionally, under the alternative, action on district consolidation or merger of the short-term Farm Credit Bank of Jackson with another farm credit bank would be left to the stockholder-borrowers. Within 6 months after the FICB of Jackson is rechartered as a short-term farm credit bank, the Farm Credit Administration will conduct a referendum of all the stockholder-borrowers of the Production Credit Associations and the Federal Land Bank Associations in the States of Alabama, Louisiana, and Mississippi to determine whether they favor consolidation of the Jackson and Texas districts and the merger of the farm credit banks of Jackson and Texas.

If the proposition is approved by both the PCA stockholders and by the FLBA stockholders, the same referendum will be held within 3 months among the stockholder-borrowers of the farm credit bank located in the Texas district.

Mr. Speaker, if the referendum carries in Texas also, then the boards of directors and management of the banks involved must develop as soon as possible a plan for consolidation of the Jackson and Texas districts and the merger of the two farm credit banks.

The plan would have to include a provision for equal representation of the

Jackson and Texas district on the board of directors of the merged bank for at least 10 years following the merger, along with other provisions to ensure efficient and effective delivery of credit and to promote the financial strength of the institutions in the consolidated district.

This is the outline of a proposed solution, a compromise if you will, but it is strictly not written in stone. It is thrust on the table just to stimulate discussion, which I feel has been sorely lacking in this particular issue.

The alternative would complete the section 410 process in the neutral fashion, putting an end to the need for further litigation, putting an end to the need for further action by Congress on what has turned out to be a locally contentious matter.

At the least, it is an alternative that would allow the farmer-borrowers of all these affected States to decide for themselves the solution which is in their best interests, a proposition which I believe to be the only fair solution.

Mr. Speaker, let us not go to court any more, let us not use lobbyists any more, let us let this particular institution help to facilitate a discussion between the contesting parties in this matter and give the affected parties a vote that is meaningful.

Mr. Speaker, folks in the Soviet Union now see the light of day in which they have a vote. Folks in the former Communist bloc nations in Eastern Europe finally see the light of day and have entered a time where their vote has some meaning. Let us not deny it to the farmer-borrowers and the rancher-borrowers of Mississippi, Alabama, and Louisiana.

Mr. Speaker, I include at this point in the RECORD a statement by the gentleman from Mississippi [Mr. MONTGOMERY] in support of this proposition.

The text of the statement referred to is as follows:

Mr. MONTGOMERY. Mr. Speaker, I want to join with my colleague from Mississippi, MIKE ESPY, in expressing opposition to section 401 of H.R. 3298. The provision mandates the merger of the Federal Intermediate Credit Bank of Jackson with an unspecified farm credit bank, and gives the Farm Credit Administration option to choose that bank. My feeling is that any action such as this should be taken only after a vote of the stockholders and borrowers who are most involved.

I understand that the Federal Intermediate Credit Bank of Jackson is in fine fiscal shape. In fact, it is the best capitalized of all the banks in the farm credit system. Since being chartered 60 years ago, this bank has never received any financial assistance. It has done the job it was created to do, and today the bank is as strong financially as it has ever been.

A recent assessment of the bank's financial situation showed that it is healthy and well-capitalized due to its long history of sound, safe management practices.

That is why I must oppose the effort to include this forced merger in H.R. 3298. The Jackson bank is in a sound fiscal position, so before Congress takes action to change things, I think we should hear from stockholders/borrowers on the issue.

The affected parties in the States of Mississippi, Alabama, and Louisiana should have the same rights that their counterparts in every other farm credit district have.

Mr. ESPY has come up with compromise language that would be a workable solution, in my opinion. It would allow our Production Credit Associations to continue to make short- and intermediate-term loans and the Texas Farm Credit Bank would be allowed to make long-term loans. It also calls for a vote to be held to determine what the stockholders/borrowers think about the merger idea.

I hope we will have the chance to consider the Espy language because it would bypass the need for more action in the courts or legislation in Congress on this issue. Without it, I cannot support H.R. 3298.

I want to again voice my support for the Espy substitute language and to commend him for taking the leadership role in trying to solve this problem.

THE DECLINE OF THE MIDDLE CLASS AND THE ECONOMIC CRISIS IN THIS COUNTRY

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from Michigan [Mr. BONIOR] is recognized for 60 minutes.

Mr. BONIOR. I thank the Speaker.

Mr. Speaker, I take the well this evening to talk about the decline of the middle class, the disparate numbers of the middle class as they relate to those who are the most fortunate in economic positions in our society, those at the very top, and then to talk a little bit about what this administration has—or I should say what this administration is not doing about this economic crisis that we have in the country today.

Let me begin, Mr. Speaker, by pointing out to my colleagues a series of articles appearing in the Kinght-Ridder newspapers originating in the Philadelphia Inquirer, authored by Donald Bartlett and James Steele, the award-winning investigative reporters for the Philadelphia Inquirer.

The subject is the decline of the middle class, how the game was rigged against the middle class, what went wrong, what happened in the 1980's to those in the middle, those at the bottom, and those at the top economically in our society.

I am not going to read all of this because it would take us many hours to digest it, to understand it, to discuss it.

But I would just like to point out a couple of things to my colleagues this evening.

What went wrong? Let me quote:

The total amount of dollars and salaries funneled to the rich soared in the 1980s, as did the number of rich themselves. Meanwhile the total dollars in wages that went to the middle class increased on the average of just 4 percent a year, or during the decade 44 percent, barely enough to keep pace with inflation.

Actually, last year the median income family lost $500 over the previous year.

Now we are talking about people who make between $20,000 and $50,000 a year. Let us move up the scale a little bit. Let us talk about increases in salaries of people earning $200,000 to $1 million a year, $200,000 to $1 million a year. Their increase was 697 percent during the 1980's, 697 percent. And if you go a step further, the increase in salaries of people earning more than $1 million a year was 2,184 percent. The wealthy got wealthier, the middle class stayed the same or shrank, and the poor, as always, got poorer.

The number of people in our middle class has shrunk dramatically in the last 12 years during the Reagan-Bush administrations.

I would like to read one other thing before I get into the discussion of how this administration and their allies on this side of the aisle have addressed or failed to address this problem. This is an article by Senator CARL LEVIN called "Executive Pay Keeps Skyrocketing." I would like to quote from it if I might.

In the last ten years, executive pay at major American corporations has exploded. At the same time, rank and file workers, as a group, have faced massive lay-offs, cutbacks in pay and benefits, and a dramatic loss of well-paying jobs.

The growing gap between executive and average worker compensation threatens American competitiveness, sours labor-management relations, and divides the American workforce. It is a trend that must be reversed for the health of our economy and the strength of our political fabric.

Statistics show the extent to which the pay of American chief executive officers (CEOs) is out of whack. First, CEOs pay in the United States far exceeds that of CEOs in any other country.

CEO pay at a mid-sized company in America ($250 million in assets) exceeds that of CEOs at the same size company in Japan by more than two times and in Australia and Sweden by almost three times. The disparity is even greater at the $1 billion plus companies.

Second, the growth in CEO pay far exceeds the pay growth for average American workers. For example, for 20 years, pay rates of CEOs, school-teachers, engineers, and factory workers increased at about the same rate. Then the 1980s came along, and CEO pay abruptly, rapidly, and disproportionately took off.

The pay gap between CEOs and average American workers has since almost tripled. In 1975, U.S. CEOs made about 34 times the pay of average American workers. Today, that figure exceeds 100.

□ 2100

Mr. Speaker, the article goes on, and on, and on, and I think people get the point. The point is that the wealthy have been feeding at the trough and

getting wealthier, and wealthier, and wealthier, and we do not deny people the ability to get wealthy in this country. That is part of the American dream. But to the extent that it is reached, it has deformed the basic fabric, economic fabric, and fairness in our society today.

Having said that, Mr. Speaker, let me, if I could, talk about what this administration has done or has failed to do to deal with this situation we have in the country, which I have in the State of Michigan, where almost a half a million people are out of work, cannot find a job. Three hundred thousand people a month in this society are exhausting unemployment benefits. The unemployment rate is officially at 6.8, but we all know it is hovering around 8 percent because of the structural deviation in the formula.

People are worried about unemployment. Nineteen percent of the American people in one poll, 20 in another poll, that say it is the No. 1 issue that is on their minds because they have someone in their home, some relative, or some neighbor who has lost their job, and these are hard-working, middle-class people who punch a clock, eat at their desk, work overtime when they can, when they have work, have a second job, but are out of work today. There is a fear in the land, a fear in the land that it could happen to me, to the next-door neighbor, and it is a serious fear.

Mr. Speaker, we have got to get moving in this Congress and in this Government. So much we can do here. The leadership downtown is instrumental in making sure we move. We on this side of the aisle, as Democrats, have said there are a number of things we have to do.

First of all, we have got to take care of those people, middle-class-income workers in our society who have been thrown out of work through no fault of their own because of this prolonged and deep recession, provide them with extended unemployment compensation. They paid for it, their employers and they. Through deferred compensation they have a fund. Eight point two billion dollars in this fund to take care of their needs. It is there for this purpose. We have ten million of these people who need help, and we have a fund to take care of them, but we cannot get the administration and the President to sign the bill to do the job.

Mr. Speaker, they say this recession is no big deal. The President says our bill is garbage. Darman says it just perpetuates the welfare system, and on, and on, and on, more excuses, people suffer, they cannot pay their mortgages, they cannot feed their kids, they cannot put 50 bucks aside for their future, for their child's education and their general future. And we have got the money sitting there to help them through this crisis.

So, unemployment compensation benefits is a part of the solution, a small part, but an important part. The next part is putting this country to work again and rebuilding it: roads, bridges, highways, sewer systems, remodeling our schools. We have done that. We passed a major transportation bill, another trust fund set-aside to do that, a $153 billion bill over 6 years that will put 2 million people to work.

Mr. Speaker, the President threatens to veto that, but we are going to pass it. We have already passed it here. It has passed in the Senate. It is going to come back, and we are going to pass it out of conference and send it to the President just like we are going to do another unemployment bill this week.

The third part of the program, and an important part, and that is to get money in the pockets of middle-class people, middle-income people, so that they can spend it, 50 bucks here, or 100 bucks here, maybe a little downpayment on an automobile, maybe a little bit to spend in the hardware store, to get this economy bubbling up again.

Henry Ford had a great idea. He decided to make automobiles, started an assembly line, produced these wonderful automobiles, but no one was buying them because no one had any money. He increased dramatically the salary of his workers, and that set a pattern across the country so that people started to buy and the economy started to explode.

We need to put tax dollars in the pockets of middle-income people so they can spend it, whether it is deferred for a rainy day, whether it is for savings, whether it is to get rid of debt, whether it is to put a downpayment on a home or automobile. That is what we have to do.

Mr. Speaker, we have a plan to do that, and we will unveil it very soon in this House of Representatives and in this Congress.

On the other hand, this administration is consumed, consumed with foreign policy, and that is not to say the foreign policy does not have an important and, in some instances, prominent role to play in our everyday political, and cultural and government life in this country. It is an important aspect of what we do. But they are consumed with it. They forget about the people here at home.

Mr. Speaker, the President can declare an emergency for the people of Bangladesh, for the Turks, for the Israelis, for the Kurds, provide them with billions of dollars. When it comes to Americans who are out of work, who need a little hand, it is not an emergency—"Can't take care of you."

Mr. Speaker, it is time to start taking care of our own. That is an important message. It is what the American people have been telling me, my colleagues, for years now. It is the reason why HARRIS WOFFORD is going to beat Dick Thornburgh in Pennsylvania tomorrow, because he is talking about taking care of Americans. He is talking about health care for Americans. He is talking about tax cuts for middle-income people and not for these CEO's, and not for the wealthy who have reaped the benefits at the expense of everybody else during the 1980's. He is talking about getting rid of this debt that we have, personal, national. He is talking about things that make sense. HARRIS WOFFORD, a man who cares about people, a man who will be a great Senator. He may even be a great President. Who knows?

Let me talk to my colleagues, if I could, for just a second about tax cut fever. There is a piece that appeared in today's Washington Post by Rowland Evans and Robert Novak, and I would like to quote from it. "An irate Senator PHIL GRAMM," a Senator from Texas; he used to serve here, glad he is in the other body—"shaken by the polls from Pennsylvania turned Thursday's weekly meeting of congressional leaders at the White House into an unprecedented exchange between President Bush and his Republican lieutenants on Capitol Hill.

□ 2110

What stunned GRAMM was the collapse of former Attorney General Dick Thornburgh's 44-point lead in Pennsylvania's special election. Confidential Republican surveys put him 2 points behind. GRAMM blamed the economy, the President's failure to take aggressive action, and Bush's advisers urging of passivity. Other GOP leaders, joined in, prompting the tart response by the President that the party's chieftains in Congress are 'sunshine patriots.' "

I am glad the President has decided not only to criticize Democrats, but to take shots at his own party leaders.

"The extraordinary session defined the real shape of political affairs in Washington today." This is Evans and Novak.

White House smugness, they say, has been replaced by icy fear, but without any resolute action planned.

The Republicans are divided about whether to move for tax cuts now or wait until January, and the President is torn between the opposing camps.

The article goes on.

Thursday's heated meeting was the climax of 2 weeks of backstage maneuvers. A tax-cuts-now offensive was launched inside the administration by the Cabinet's only dissenter, Housing Secretary Jack Kemp, with cautious support from Vice President DAN QUAYLE.

I underline "cautious."

Bush reelection campaign chiefs, headed by Commerce Secretary Robert Mosbacher, also pressed for action. Nagged by Republican fat cats, Bush seemed ready to move.

But on Sunday, October 20, Senator Lloyd Bentsen of Texas, Democratic tax master in the Senate, unveiled his plan to give tax-

payers $300 for every child. The next day the bond market went south in revulsion.

Well, that is not surprising. When the bond market people and the people on Wall Street and the fat cats see that the middle class are going to get anything, they get revulsed. That is the way it has been during the last 12 years or 11 years, and that is the way I guess it will be until we change the formula around here.

Back to the text of Evans and Novak. "That strengthened the hand of the Cabinet's leading antiaction advocate, Treasury Secretary Nicholas Brady, who fears tax-cut fever like the red death. From the hallowed inner sanctum of the Federal Reserve Bank came word that the central bankers preferred caution," against middle income people.

Not to be surprised. The bankers do not want the middle class to get a break either, right in there with the bond market people.

With the tax cutters in seeming retreat, Fed Chairman Alan Greenspan last Monday signaled interest rate cuts ahead. White House sources sighed in relief, thinking that would take the pressure off and nothing would happen until the new year.

But the battle was not over. Bush returned from Madrid Wednesday to go directly into an Oval House meeting on the economy, where Quayle advised him action was needed. Representative Vin Weber and Senator Robert Kasten unveiled a tax cut package, the fearless Kemp personally on hand to endorse it. That night at a private Hay-Adams Hotel dinner for Republican wise men, a straw vote came out in favor of a pre-Christmas tax cut, though only narrowly.

The next day at the White House, the inimitably pugnacious GRAMM, and he is pugnacious, I would agree with that, demanded action. He was backed by WEBER, KASTEN, and House minority whip NEWT GINGRICH of Georgia, blaming unnamed Presidential advisers for suppressing tax-cut fever. Everybody knew whom they meant: Brady, Chief of Staff John Sununu and Budget Director Dick Darman.

So what we see was the old fight we had last October when these fellows, the distinguished gentleman minority whip, Mr. GINGRICH, was in a real tussle and a real battle with Mr. Sununu and Mr. Darman, and they did not speak to each other for a period of time, and they were cussing out each other's plan to deal with the budget situation. It was a very, very tough time for these people.

Well, they are back at it again.

The advisers did not respond, but the President did. He harkened back to last year's budget agreement when Gingrich led a revolt against the Bush-backed tax increase. Would his Republicans, Bush asked, leave him in the lurch again? Would he end up vetoing a Democratic bill, while they would not support him?

Next, Kasten candidly took issue with Bush's formulation that he must "govern" and could not play the political game full tilt until he announced his candidacy. Kasten, facing his owr tough fight for reelection in Wisconsin—

And no wonder why, he sides with the big bankers and the bond market people and all those folks—

Kasten, facing his own tough fight for reelection in Wisconsin, argued forcefully that the campaign has already started and an unknowing Bush is still on the sidelines.

Still on the sidelines. Well, I suspect that Dick Thornburgh would probably agree with that.

"What the President faces is not so simple as choosing between Congressional Republicans and his own advisers. At Thursday's meeting, House Minority Leader Robert Michel displayed reluctance to support what was seemingly clear-cut party policy; a capital gains tax cut. Improbably," Evans and Novak says, "Michel claimed he never had found a businessman who liked the idea."

I stopped when I read that, too.

"Improbably, Michel claimed he never had found a businessman who liked the idea" of a capital gains tax cut.

"Even Republicans who demand action are split on whether to balance campaign reductions with an upper bracket tax increase. Quayle says yes, Gramm absolutely no."

The last paragraph of the article by Evans and Novak says, "Only George Bush can set a decisive course. But the resolute Commander in Chief of Desert Storms laurels seems weak and confused in the economic arena. At stake is not only the Nation's economic health but whether Bush follows Jimmy Carter as a one-term President."

David Broder, in this same newspaper, the Washington Post, has a column that appeared on the 30th of last month called "Recession obsession."

He starts off by saying "President Bush is learning the truth of the old adage, 'When the economy goes wrong, everything goes wrong.'

"The sour, defensive tone of his last Washington news conference is the mirror image of the edgy, apprehensive tone of the voters I have been interviewing here in the self-styled Inland Empire," talking about California.

"While Bush busies himself in Madrid resolving ancient enmities in the Middle East, the residents of this county," San Bernardino County, "which Bush carried handily in 1988, stew about the loss of jobs, the rise of crime and the influx of drug gangs."

The article goes on to say,

What the American people need least at this moment is evidence that Washington does not know what to do about the situation. And, unfortunately, that's just what they got from Bush's last press conference before heading overseas. With his economic advisers quarreling among themselves over the best course, Bush confessed he is puzzled by what to do. "What's needed? What will help? I am trying to sort that through."

Fred Barnes, the Washington Times, October 22, an article entitled "Pesky Slump Thing."

In the article, Mr. Barnes, a conservative, says:

The Bush administration has lost is cohesion. Mr. Bush is often testy, opening White House meetings with angry outbursts. Faced with domestic problems, he is unsure. The control he's displayed in crises overseas is absent.

Mr. Bush bristles at the notion that he is a 'foreign policy President' who ignores domestic problems.

On the economy he's torn between arguing everything is fine and everything isn't. On October 4 he argued both. 'The drop in unemployment is one more sign that the economy is strengthening,' he said. Later he added, "Let me be the first to say all is not well."

At a September 2 EPC meeting, Economic Policy Council, Mr. Bush read the riot act. He said, "The credit crunch is real." He complained about overregulation. He said aides had assured him the credit problem was solved. "It's not solved," he asserted. "There is nothing coming from us about what we are going to do. There is nothing coming from us about what we are going to do."

□ 2120

Amen. We know that.

Hobart Rowen, the Washington Post, the 20th of October, I believe. The title of the article, "Bush's Nonpolicy Could Worsen the Recession."

"A few wise old Republican hands, like Senate minority leader ROBERT DOLE, are looking for ways to offset the GOP's Uncle Scrooge image on this issue," talking about unemployment and help for the unemployed.

"As part of the transparent-damage-limitation campaign, White House Chief of Staff John Sununu, who knows nothing about economics," this is Hobart Rowen, "but is supposed to know something about politics is masterminding a resurrection of Bush's capital gains proposal. That, at least, is what Sununu implies in a Wall Street Journal interview.

"Sununu regurgitates the deceptive notion that this bonanza for upper-income taxpayers will actually raise revenue. In the short run, that might help. Thus making the package, including other tax cuts, revenue neutral. But any economist worth the cost of his or her degree knows that Bush's capital gains proposal would lose money over the long run, adding to the Federal budget deficit.

The business community, as a matter of fact, has been in the forefront of criticism of the administration's economic approach, accurately labeling as delusion its soothing assurances of a short and shallow recession.

It goes on and on and on. He quotes John Kenneth Galbraith about how difficult the times are in this economy and for millions of Americans.

Mr. Speaker, I will not belabor the point. I think I have made it. This administration's answer to getting this economy back in order is a tax cut for the wealthiest people in our society, people who have gained tremendous wealth over the 1980's.

They believe in this theory of trickle down, where you provide a select few at the top big bonanzas and somehow it is going to make its way throughout society.

The fact of the matter is, the chickens are coming home to roost. It has not worked. America needs leadership on the economic front. We need someone who will stand up for working middle-class people. We need someone who will speak for those who have been thrown out of work, through no fault of their own, in this deep and prolonged recession.

We need those who will address the health care issue, who will talk about the needs of the 37 million Americans who have nothing, not a dime, and for the literally tens of hundreds of millions of Americans who have insurance but are finding the cost so difficult to maintain and the coverage so meager in many instances.

This administration has not been paying attention to what is happening here at home. I regret that so very much, very much. The President has found it convenient to spend a good deal of his time on foreign policy. Again, I want to make it very clear, I do not begrudge the President's need to do that. I do not fault his leadership in certain areas. In fact, I commend him and Secretary Baker in what they did in the Middle East. It has been positive. It has been helpful, and they are both to be commended and congratulated. But there is an obsession with foreign policy. The stargazing over the Atlantic, while ignoring what is happening here at home.

All they have to do is pivot 180 and look what is happening in the rest of the country. But they will not. They are interested in traveling.

The President's itinerary: He has traveled a lot over the last year. September, he was in Helsinki, Finland, September of 1990. November 16 he was in Prague, Czechoslovakia. On the 18th, 2 days later, he was in Germany. Next day he went to Paris. A couple of days later he went to Jeddah, Saudi Arabia. Next day to Dhahran, Saudi Arabia. Next day to Cairo, Egypt. Next day to Geneva, Switzerland. Three days later Mexico City, Mexico. On the 3d of December, about a week later, to Brasilia, Brazil. I do not know why. On the 4th of December, Punta del Este, Uruguay. A day later Buenos Aires, Argentina. A day later he went to Santiago, Chile. On the 7th of December, 1990, he was in Caracas, Venezuela.

On the 13th of March, 1991, he was in Ottawa, Canada. On the 14th, 1991, he went to Martinique in the French West Indies. On the 16th, 1991, he went to Hamilton, Bermuda. On the 14th of July he was in France. On the 15th he went to London. On the 18th to Athens, Greece. On the 19th to Crete, on the 20th to Turkey, on the 21st to Istanbul, on the 30th to Moscow, on the 29th of October, to Madrid, Spain. On the 7th of November, he is planning a trip in a couple of days to Rome, Italy. Then to The Hague in the Netherlands and to be announced trips to Japan, South Korea, Australia, Singapore, and Indonesia.

Some of these, perhaps a good many of these trips, had merit to them, but if the President would devote a portion of his time that he spends overseas to the needs of unemployed people in this country, to the needs of this economy, to the health care needs of this country, Americans would be better off. Americans would appreciate him more. Americans would respond to him more.

Surely he knows he was at 90 percent in March in the polls and now he has dropped in some polls down to 55-percent approval rating.

Mr. President, stay home. Take care of business here. Start taking care of our own. America wants you here. We want you to deal with the health care crisis, with the unemployment crisis, the education problems we have, the environment. Stay here, Mr. President. There is plenty of work to be done here in America.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SMITH of Florida (at the request of Mr. GEPHARDT), for November 5 through 11, 1991, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DREIER of California) to revise and extend their remarks and include extraneous material:)

Mr. COX of California, for 5 minutes today.

Mr. HANCOCK, for 5 minutes, on November 5.

Mr. RIGGS, for 5 minutes, on November 5.

Mr. LIVINGSTON, for 5 minutes, on November 6.

Mr. MCCOLLUM, for 5 minutes, today.

(The following Members (at the request of Mr. MCNULTY) to revise and extend their remarks and include extraneous material:)

Mr. PEASE, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. LOWEY of New York, for 5 minutes today.

Mr. ESPY, for 60 minutes, today.

Mr. BONIOR, for 60 minutes today.

Mr. GONZALEZ, for 60 minutes, each day on November 5, 8, 11, 15, 18, 22, 25 and 29.

Mr. LIPINSKI, for 60 minutes, each day on November 6, 13, 20, and 27.

Mr. PEASE, for 5 minutes, each day on November 5, 6, 7, and 8.

Mr. PICKETT, for 60 minutes, on November 5.

Mr. JACOBS, for 60 minutes, on November 5.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. ARMEY, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. DREIER of California) and to include extraneous matter:)

Mr. BILIRAKIS.
Mr. RIGGS.
Mr. GALLEGLY.
Mr. MACHTLEY.
Mr. RITTER.
Mr. MCCOLLUM.
Ms. ROS-LEHTINEN.

(The following Members (at the request of Mr. MCNULTY) and to include extraneous matter:)

Mr. ANDERSON in 10 instances.
Mr. GONZALEZ in 10 instances.
Mr. BROWN in 10 instances.
Mr. ANNUNZIO in six instances.
Mrs. LLOYD in 10 instances.
Mr. HAMILTON in 10 instances.
Mr. DE LA GARZA in 10 instances.
Mr. TRAFICANT in two instances.
Mr. REED in two instances.
Mr. SOLARZ.
Mr. RAHALL.
Mr. SMITH of Florida.
Mr. SABO.
Mr. ATKINS.
Mr. MARTINEZ.
Mr. OWENS of New York.
Mr. GUARINI.
Mr. COLEMAN of Texas.
Mr. ENGEL.
Mrs. LOWEY of New York in two instances.
Mr. BILBRAY.
Mr. AUCOIN.

SENATE JOINT RESOLUTIONS REFERRED

Joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 61. Joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day" to the Committee on Post Office and Civil Service.

S.J. Res. 96. Joint resolution to designate November 19, 1991, as "National Philanthropy Day" to the Committee on Post Office and Civil Service.

S.J. Res. 145. Joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week" to the Committee on Post Office and Civil Service.

S.J. Res. 164. Joint resolution designating the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, each separately as "Na-

tional Job Skills Week" to the Committee on Post Office and Civil Service.

S.J. Res. 174. Joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month" to the Committee on Post Office and Civil Service.

S.J. Res. 176. Joint resolution to designate March 19, 1992, as "National Women in Agriculture Day" to the Committee on Post Office and Civil Service.

S.J. Res. 180. Joint resolution to designate December 1 through 7, 1991, as "Geography Awareness Week" to the Committee on Post Office and Civil Service.

S.J. Res. 188. Joint resolution designating November 1991 as "National Red Ribbon Month" to the Committee on Post Office and Civil Service.

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian" to the Committee on Post Office and Civil Service.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1046. An Act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans,

H.R. 2686. An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes,

H.J. Res. 281. Joint resolution approving the extension of non-discriminatory treatment with respect to the products of the Mongolian People's Republic, and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

ADJOURNMENT

Mr. BONIOR. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 29 minutes p.m.) the House adjourned until tomorrow, Tuesday, November 5, 1991, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2298. A letter from the Comptroller General, the General Accounting Office, transmitting the status of budget authority that was proposed for rescission by the President in his sixth special impoundment message for fiscal year 1991, dated July 24, 1991, pursuant to 2 U.S.C. 685 (H. Doc. No. 102-159); to the Committee on Appropriations and ordered to be printed.

2299. A letter from the Secretary, Housing and Urban Development, transmitting the final report describing the strategy and action plan developed to assist in the disposition of foreclosed properties in the stock of the Department, pursuant to Public Law 101-625, section 338(a) (104 Stat. 4146); to the Committee on Banking, Finance and Urban Affairs.

2300. A letter from the Secretary of Housing and Urban Development, transmitting the eighth annual report on rental rehabilitation for fiscal year 1991, pursuant to 42 U.S.C. 1437o(n); to the Committee on Banking, Finance and Urban Affairs.

2301. A letter from the Comptroller General, General Accounting Office, transmitting the list of all reports issued or released in September 1991, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

2302. A letter from the Chairman, Nuclear Regulatory Commission, transmitting the report on the nondisclosure of safeguards information for the quarter ending September 31, 1991, pursuant to 42 U.S.C. 2167(e); to the Committee on Energy and Commerce and Interior and Insular Affairs.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 2929. A bill to designate certain lands in the California desert as wilderness, to establish the Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes; with amendments; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than November 5, 1991, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X (Rept. 102-283, Pt. 1). Ordered to be printed.

Mr. ROSTENKOWSKI: Committee on Ways and Means. H.R. 2056. A bill to amend the Tariff Act of 1930 to require that subsidy information regarding vessels be provided upon entry within customs collection districts and to provide effective trade remedies under the countervailing and antidumping duty laws against foreign-built ships that are subsidized or dumped; with amendments; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than February 28, 1992, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 102-284, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GEPHARDT (for himself, Mr. LEVIN of Michigan, Mr. MAZZOLI, Mr. KILDEE, Ms. KAPTUR, Mr. MINETA, Mr. MARKEY, and Mr. ECKART):

H.R. 3702. A bill to extend and enhance the operation of the "Super 301" provisions of the Trade Act of 1974, and for other purposes; to the Committee on Ways and Means.

By Mr. DELLUMS (for himself, Ms. NORTON, and Mr. STARK):

H.R. 3703. A bill to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes; jointly, to the Committees on the District of Columbia, Government Operations, and Public Works and Transportation.

By Mr. HERTEL (for himself, Mr. JONES of North Carolina, Mr. BROWN, and Mr. SCHEUER):

H.R. 3704. A bill to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992; jointly, to the Committees on Merchant Marine and Fisheries and Science, Space, and Technology.

By Mr. FRANK of Massachusetts:

H.R. 3705. A bill to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. GUARINI (for himself, Mr. FASCELL, Mr. SMITH of Florida, Mr. CRANE, Ms. ROS-LEHTINEN, Mr. MOODY, Mr. GILMAN, Mr. FORD of Tennessee, Mr. SCHULZE, Mr. JENKINS, Mr. RUSSO, Mr. SHAW, and Mr. SCHEUER):

H.R. 3706. A bill regarding the extension in 1992 of most-favored-nation treatment to the products of the Union of Soviet Socialist Republics; to the Committee on Ways and Means.

By Mrs. SCHROEDER:

H.R. 3707. A bill to provide grants for State pilot programs to retrain individuals in low paying and low-skill jobs in order to reduce unemployment and increase the pool of skilled workers in the United States; to the Committee on Education and Labor.

By Mrs. VUCANOVICH:

H.R. 3708. A bill to provide for an exchange of lands in the State of Nevada; jointly, to the Committees on Agriculture and Interior and Insular Affairs.

By Mr. CUNNINGHAM (for himself, Mr. DORNAN of California, Mrs. BENTLEY, Mr. BLAZ, Mr. BRUCE, Mr. DICKINSON, Mr. ESPY, Mr. EVANS, Mr. EWING, Mr. FRANKS of Connecticut, Mr. HANCOCK, Mr. HEFLEY, Mr. HOCHBRUECKNER Mr. HORTON, Mr. HUGHES, Mr. HUNTER Mr. HUTTO, Mr. JEFFERSON, Mr. KASICH, Mr. KOLTER, Mr. LANCASTER, Mr. LANTOS, Mr. LENT, Mr. LOWERY, of California, Mr. MARTIN, Mr. MCCLOSKEY, Mr. MCCRERY, Mr. MCGRATH, Mr. NCNULTY, Mr. MONTGOMERY, Mr. ORTIZ, Mr. OXLEY, Mr. PICKETT, Mr. RAVENEL, Mr. RITTER, Mr. SISISKY, Mr. SKEEN, Mr. SPENCE, Mr. STUMP, Mr. TAYLOR of Mississippi, Mr. TRAFICANT, and Mr. VANDER JAGT):

H.J. Res. 367. Joint resolution to urge and request the award of the Bronze Star to Navy and Marine Corps personnel who served in the defense of Corregidor Island, the Philippines, under General Wainwright; to the Committee on Armed Services.

By Mr. COX of California:

H. Res. 268. Resolution presenting a question of the privileges of the House; considered and postponed until November 6, 1991.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 127: Mr. BENTLEY and Mr. DOWNEY.

H.R. 474: Mr. DUNCAN.

H.R. 576: Mr. SCHAEFER, Mr. YOUNG of Florida, Mr. PETERSON of Minnesota, Mr. BENNETT, and Mr. CRAMER.

H.R. 661: Mr. ZELIFF, Mr. OWENS of Utah, Mr. MACHTLEY, Mr. SCHIFF, and Mr. KOSTMAYER.

H.R. 673: Mr. COX of Illinois.

H.R. 730: Ms. NORTON.

H.R. 793: Mr. MACHTLEY, Mr. CALLAHAN, Mr. YOUNG of Florida, Mr. PETERSON of Minnesota, Mr. DAVIS, Mr. ESPY, Mr. OWENS of Utah, and Mr. LANTOS.

H.R. 806: Mr. MCCANDLESS.

H.R. 842: Mr. SANDERS, Ms. WATERS, and Mr. ANDREWS of Maine.

H.R. 872: Mr. BEREUTER and Mr. FORD of Tennessee.

H.R. 967: Mr. FRANK of Massachusetts.

H.R. 1004: Mr. LIGHTFOOT.

H.R. 1021: Mr. DWYER of New Jersey, Mr. EVANS, Mr. FROST, Mr. JEFFERSON, Mr. LAFALCE, Mr. OWENS of Utah, Mr. RANGEL, and Mr. ROE.

H.R. 1245: Mr. HOAGLAND, Mr. EWING, Mr. FUSTER, Mr. HORTON, and Mr. TORRICELLI.

H.R. 1311: Mr. ENGEL, Mr. HALL of Ohio, Mr. MCMILLEN of Maryland, Mr. OXLEY, Mrs. ROUKEMA, and Mr. WELDON.

H.R. 1312: Mr. ENGEL, Mr. HALL of Ohio, Mr. OXLEY, Mrs. ROUKEMA, and Mr. WELDON.

H.R. 1386: Mr. HAYES of Illinois, Mr. JEFFERSON, Mr. LAFALCE, Mr. MFUME, and Mr. MORAN.

H.R. 1389: Mr. ROYBAL.

H.R. 1391: Mr. MACHTLEY.

H.R. 1393: Mr. DE LUGO.

H.R. 1473: Ms. NORTON, Mr. ANDREWS of Maine, and Mrs. LOWEY of New York.

H.R. 1502: Mr. TRAXLER, Mr. TORRES, Mr. EDWARDS of California, and Mr. DORGAN of North Dakota.

H.R. 1527: Mr. PASTOR and Mrs. MEYERS of Kansas.

H.R. 1730: Mr. FRANKS of Connecticut and Ms. LONG.

H.R. 1750: Mr. MACHTLEY.

H.R. 1771: Mr. HOUGHTON, Mr. MCCRERY, and Mr. SPRATT.

H.R. 1916: Mrs. MINK and Ms. SNOWE.

H.R. 2058: Ms. SNOWE.

H.R. 2070: Mr. BENNETT and Ms. NORTON.

H.R. 2089: Mr. BACCHUS.

H.R. 2248: Mr. SANDERS, Mr. FAZIO, Mr. ARCHER, and Mr. BRUCE.

H.R. 2390: Mr. EVANS.

H.R. 2534: Mr. RIDGE, Mr. HANSEN, Mr. EVANS, Mr. LEHMAN of California, Mr. GILCHREST, Mr. CAMP, Mr. GEKAS, Mr. MILLER of Ohio, Mr. FASCELL, Mr. FISH, Mr. OXLEY, Mr. MAVROULES, Mr. COX of California, Mr. BOUCHER, Mr. MCCOLLUM, Mr. BACCHUS, Mr. JOHNSON of South Dakota, Mr. ANDREWS of Maine, Mr. MCCLOSKEY, Mr. FAWELL, Mr. ANDERSON, and Mr. VENTO.

H.R. 2540: Mr. KOLTER, Mr. DINGELL, Mr. BOEHNER, Mr. RITTER, and Mr. LIPINSKI.

H.R. 2541: Mr. KOLTER and Mr. DINGELL.

H.R. 2600: Mr. OLIN, Mr. DELLUMS, Mr. PETERSON of Minnesota, and Mr. DOWNEY.

H.R. 2643: Mr. EWING.

H.R. 2755: Mrs. JOHNSON of Connecticut.

H.R. 2867: Mr. LANCASTER.

H.R. 2870: Mr. MCCANDLESS.

H.R. 2880: Ms. WATERS, Mr. RUSSO, Mr. HOYER, and Mr. GILCHREST.

H.R. 2890: Ms. KAPTUR, Mr. JOHNSTON of Florida, and Mrs. VUCANOVICH.

H.R. 2898: Mr. TAYLOR of North Carolina, Mrs. LOWEY of New York, Mr. Boehlert, Mr. ROE, and Mr. WOLPE.

H.R. 3067: Mr. BLAZ, Mr. LAGOMARSINO, and Mr. MARTINEZ.

H.R. 3070: Mr. MFUME, Mr. LEHMAN of California, Mr. BOEHLERT, Mr. PALLONE SANTORUM, and Mr. DELAY.

H.R. 3102: Mr. SERRANO, Mr. LANCASTER, and Ms. NORTON.

H.R. 3195: Mr. WOLPE, Mr. DEFAZIO, Mr. BONIOR, Mr. BILBRAY, and Mr. OWENS of Utah.

H.R. 3209: Mr. PETERSON of Florida.

H.R. 3212: Mr. MCCANDLESS.

H.R. 3231: Mr. JONTZ.

H.R. 3250: Mr. JONES of Georgia.

H.R. 3253: Mr. FORD of Tennessee, Mr. GIBBONS, and Mr. DONNELLY.

H.R. 3292: Mr. FRANK of Massachusetts, Mr. FASCELL, Mr. HERTEL, Mr. COLEMAN of Texas, Mr. FAZIO, Mr. VALENTINE, Mr. HORTON, Ms. KAPTUR, Mr. MCCLOSKEY, Mr. HUGHES, Mr. GUARINI, and Mr. VENTO.

H.R. 3313: Mr. JONES of Georgia.

H.R. 3405: Mr. ATKINS.

H.R. 3512: Mr. WEBER, Mr. ANDERSON, Mr. BILBRAY, Mr. LAUGHLIN, Mr. SKELTON, Mr. ENGLISH, Mr. VISCLOSKY, Mr. PETERSON of Minnesota, Mr. QUILLEN, Mr. SUNDQUIST, Mr. ANDREWS of Texas, and Mr. HALL of Texas.

H.R. 3537: Mr. COUGHLIN and Mr. BLAZ.

H.R. 3545: Mr. RICHARDSON, Mr. HALL of Texas, Mr. VENTO, and Mr. SHAYS.

H.R. 3595: Mr. BROWN, Mr. WELDON, Mr. STAGGERS, Mr. OWENS of Utah, Mr. MCHUGH, Mr. YATRON, Mr. OBERSTAR, Mr. KOPETSKI, Mr. SCHUMER, Mr. JONTZ, Mr. TRAXLER, Mr. ORTIZ, Mr. TORRES, Mr. LEVINE of California, Mr. MRAZEK, Mr. DE LUGO, Mr. CONYERS, Mr. LEHMAN of California, Mr. FASCELL, and Mr. SKAGGS.

H.R. 3599: Mr. HOLLOWAY.

H.R. 3649: Mr. KLECZKA, Mr. BOUCHER, Mr. WILSON, and Mr. KOLTER.

H.R. 3681: Mr. DINGELL, Mr. STENHOLM, Mr. RAMSTAD, Mr. ANDREWS of Maine, and Ms. KAPTUR.

H.J. Res. 212: Mr. SERRANO, Mr. DYMALLY, Mr. NATCHER, Mr. TRAFICANT, Mr. GEREN of Texas, Mr. CARR, Mr. SAXTON, Mr. SMITH of New Jersey, Mr. WALSH, Mr. MCCOLLUM, and Mr. KOPETSKI.

H.J. Res. 312: Mr. MATSUI, Mr. TORRES, Mr. LEWIS of Georgia, Mr. APPLEGATE, Mr. BALLENGER, Mr. BILIRAKIS, Mr. DURBIN, Mr. EDWARDS of Oklahoma, Mr. KILDEE, Mr. LIGHTFOOT, Mr. ORTON, Ms. PELOSI, Mr. SABO, Mr. SCHUMER, Ms. SNOWE, Mr. YOUNG of Alaska, and Mr. THOMAS of Wyoming.

H.J. Res. 324: Mr. KASICH, Mr. LEWIS of California, Mr. FALEOMAVAEGA, Mr. APPLEGATE, Mr. REGULA, and Mr. MCCRERY.

H.J. Res. 350: Mr. BENNETT, Mrs. BENTLEY, Mr. BERMAN, Mr. BILBRAY, Mr. BONIOR, Mr. BORSKI, Mr. CARPER, Mr. CLEMENT, Mr. CONYERS, Mr. COUGHLIN, Mr. COX of California, Mr. CRANE, Mr. DEFAZIO, Mr. DWYER of New Jersey, Mr. FAZIO, Mr. FOGLIETTA, Mr. FROST, Mr. HAMILTON, Mr. HAMMERSCHMIDT, Mr. HERTEL, Mr. HOAGLAND, Mr. HORN, Mr. HOYER, Mr. HUGHES, Mr. HYDE, Mr. JACOBS, Mr. JEFFERSON, Mr. JONTZ, Ms. KAPTUR, Mr. KOSTMAYER, Mr. LANCASTER, Mr. LEVIN of Michigan, Mr. LIVINGSTON, Mr. MCDERMOTT, Mr. MCEWEN, Mr. MCNULTY, Mr. MARTINEZ, Mr. MFUME, Ms. MOLINARI, Mr. MOLLOHAN, Ms. NORTON, Mr. NOWAK, Mr. ORTIZ, Ms. PELOSI, Mr. POSHARD, Mr. RUSSO, Mr. SHAW, Ms. SLAUGHTER of New York, Mr. SOLOMON, Mr. SMITH of New Jersey, Mr. SMITH of Florida, Mr. STAGGERS, Mr. VOLKMER, Mrs. VUCANOVICH, Mr. WASHINGTON, Mr. WOLPE, and Mr. YATRON.

H.J. Res. 356: Mr. FROST, Mr. VENTO, Mr. HUGHES, Mrs. COLLINS of Michigan, Mr. JEFFERSON, Mr. MARTINEZ, Mr. FAZIO, Mr. LIVINGSTON, Mr. PICKETT, and Mr. COUGHLIN.

H. Con. Res. 192: Mr. MORAN, Mr. SPRATT, Mr. CRAMER, Mr. BEVILL, Mr. DORNAN of California, Mr. SYNAR, Mr. RAY, Mr. PURSELL, Mr. PARKER, Mr. YOUNG of Florida, Mr. PANETTA, and Mr. PORTER.

H.Con. Res. 224: Mr. MOORHEAD, Mr. TRAFICANT, Mr. ANDERSON, and Mr. WILSON.

H. Res. 134: Mr. ANDREWS of Maine.

H. Res. 164: Mr. WASHINGTON.

H. Res. 238: Mr. MORAN.

H. Res. 257: Mr. JONTZ, Mrs. UNSOELD, Mr. TRAXLER, and Mr. UPTON.

H. Res. 260: Mr. GEJDENSON, Mr. MCNULTY, and Mr. GILMAN.